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**Ethics Commission**



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION**

**NOTICE OF SPECIAL MEETING**

**July 18, 2012 5:00 P.M. (Room 416),**

**July 19, 2012 5:00 P.M. (Room 416),**

**August 16, 2012 9:00 A.M. (Room 263)**

**and AGENDA**

**Room 263 or 416 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

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NOTICE: Please note that these are not the times or rooms of the Commission's regular meetings.

The Commission will continue its hearing on the Mirkarimi matter beginning on July 18 and will determine each day whether to continue this matter to another day pursuant to the schedule listed above. The Commission is expected to consider all matters relevant to this hearing, including stipulations, sworn declarations, direct testimony and questions and responses made on cross examination. The Commission may make procedural and substantive comments or rulings regarding such evidence.

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I. Call to order and roll call.

- II. The Ethics Commission will continue its hearing on charges of official misconduct pending against Sheriff Ross Mirkarimi. Under Charter Section 15.105, when the Mayor suspends an elective officer, “The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained.” Attorneys representing the Mayor and the Sheriff have filed papers with the Ethics Commission relating to identified issues, fact and expert witnesses, and other matters set forth at the Commission’s April 23, 2012, May 29, 2012, June 19, 2012, June 28, 2012 and June 29, 2012 meetings. Among other things, the Commission will continue to address the issues raised in the briefs and objections to evidence and witnesses; and consider sworn declarations, direct testimony and questions raised on and responses to cross-examination, as well as the parties’ agreed-upon factual stipulations. There will be an opportunity for public comment on this item after the evidentiary phase is complete, when the Commission will begin its deliberations to formulate its recommendations to the Board of Supervisors as required under the Charter. (Discussion and possible action.)

III. Adjournment.

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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

## PRESS RELEASE

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JAMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
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COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

**Contact:**  
**John St. Croix**  
**(415) 252-3100**

**For release:**  
**July 11, 2012**

### SUMMARY OF ACTIONS TAKEN AT JUNE 28 and 29, 2012 MEETINGS

At its special meetings on June 28 and 29, the San Francisco Ethics Commission continued the evidentiary phase of the hearing on the charges of official misconduct pending against Sheriff Ross Mirkarimi. The Commission took the following interim actions:

- With respect to the declarations filed by the Mayor's and the Sheriff's witnesses, the Commission preliminarily sustained, modified or overruled various objections by the parties (these rulings will be detailed in a subsequent document);
- With respect to the video of Eliana Lopez, the Commission preliminarily admitted the video;
- Heard testimony from and asked questions of the following live witnesses: Sheriff Ross Mirkarimi, Mayor Edwin M. Lee, and the Mayor's expert witness, San Diego Chief of Police William Lansdowne;
- Approved the following schedule:

Due Date	Item
July 2, 2012	<ul style="list-style-type: none"><li>• Eliana Lopez to resubmit and re-sign her declaration to attest that the declaration is submitted under penalty of perjury under the laws of the State of California</li></ul>
July 10, 2012	<ul style="list-style-type: none"><li>• The Mayor to provide objections to the declaration of Eliana Lopez</li><li>• The Mayor to identify rebuttal witnesses, if any</li><li>• The Sheriff to advise whether Former Sheriff Michael Hennessey will appear for live testimony</li></ul>
July 17, 2012	<ul style="list-style-type: none"><li>• The Sheriff to respond to objections to the declaration of Eliana Lopez</li><li>• The parties, having met and conferred, to provide stipulation regarding the expert declaration of Nancy K.D. Lemon</li><li>• The Sheriff to identify the portions of allegations in the</li></ul>

	Amended Charges of Official Misconduct, Bill of Particulars, that he disputes
July 18, 2012	Ethics Commission meeting (5 p.m., Room 416 City Hall): <ul style="list-style-type: none"> <li>• Linnette Peralta Haynes is expected to provide live testimony</li> <li>• Eliana Lopez is expected to provide live testimony or appear remotely</li> <li>• Former Sheriff Michael Hennessey may provide live testimony</li> </ul>
July 19, 2012	Ethics Commission meeting (5 p.m., Room 416 City Hall): <ul style="list-style-type: none"> <li>• Former Sheriff Michael Hennessey may provide live testimony</li> <li>• The Mayor's rebuttal witness(es) may provide live testimony</li> </ul>
August 10, 2012	The parties to provide findings of fact and briefing on legal issues
August 16, 2012	Ethics Commission meeting (9 a.m., Room 263 City Hall)

By votes of 5-0 at the end of each day, the Commission approved the above interim decisions made regarding evidence and scheduling. This special meeting will continue on Wednesday, July 18, 2012 at 5:00 p.m. in Room 263 City Hall.

#

The Ethics Commission, established in November 1993, serves the public, City employees and officials and candidates for public office through education and enforcement of ethics laws. Its duties include: filing and auditing of campaign finance disclosure statements, lobbyist and campaign consultant registration and regulation, administration of the public financing program, whistleblower program, conflict of interest reporting, investigations and enforcement, education and training, advice giving and statistical reporting.

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**[DRAFT]**  
Minutes of the Special Meeting of  
The San Francisco Ethics Commission  
July 18, 2012  
Room 416, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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The complete court reporter's transcript of the July 18, 2012 special meeting has been posted on the Commission's website. A copy of the transcript is also available for review at the Commission office during regular business hours.

**I. Call to order and roll call**

Chairperson Hur called the meeting to order at 5:02 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamienne S. Studley, Vice-Chairperson; Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner; Paul A. Renne, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator.

COUNSEL FOR THE ETHICS COMMISSION: Scott Emblidge.

COUNSEL FOR THE MAYOR: Peter J. Keith, Deputy City Attorney (DCA), Sherri S. Kaiser, DCA.

OTHERS PRESENT: Sheriff Ross Mirkarimi; Shepard S. Kopp, counsel for Sheriff Mirkarimi; David Waggoner, counsel for Sheriff Mirkarimi; Eliana Lopez; Paula Canny, counsel for Eliana Lopez; Linnette Peralta Haynes; Eric Safire, counsel for Linnette Peralta Haynes; and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Written Charges of Official Misconduct, filed March 21, 2012.
- Memorandum from the Office of the City Attorney re: Legal Counsel for Ethics Commission and Board of Supervisors for Official Misconduct Charges, dated April 12, 2012.
- Staff Memorandum re: Recommendations on hearing on charges of official misconduct, dated April 17, 2012.
- Letter to the Ethics Commission and City Attorney from David Waggoner and Shepard Kopp, Counsel for Sheriff Mirkarimi, re: Agenda for April 23, 2012 meeting, including correspondence with Deputy City Attorney Keith, dated April 23, 2012.

- Memorandum from DCA Keith and DCA Kaiser, Counsel for the Mayor, re: Hearing on Charges of Official Misconduct Against Sheriff Ross Mirkarimi, dated April 23, 2012.
- Press Release - April 24, 2012 - Summary of Actions Taken at April 23, 2012 Meeting.
- Mayor Lee's Opening Brief on the Issues Specified by the Ethics Commission, dated April 30, 2012.
- Mayor's Initial List of Fact Witnesses, dated April 30, 2012.
- Letter to the Ethics Commission from the City Attorney, re: Sheriff Mirkarimi's Duty to Cooperate with the Official Misconduct Investigation and the Role of the Ethics Commission in that Investigation, dated April 30, 2012.
- Mayor's Initial List of Subject-Matter Expert Witnesses, dated May 7, 2012.
- Sheriff Ross Mirkarimi's Opening Brief, dated May 7, 2012.
- Sheriff Ross Mirkarimi's List of Potential Fact Witnesses, dated May 10, 2012.
- Mayor's Supplemental Disclosure of Subject-Matter Expert Witnesses, dated May 10, 2012.
- E-mail from David Waggoner to Scott Emblidge, Request for Protective Order, dated May 15, 2012.
- Request for Protective Order, dated May 15, 2012.
- E-mail from Sherri Kaiser to Scott Emblidge, Request for Protective Order -- Court papers, dated May 15, 2012.
- Order Granting Third-Party Movant City and County of San Francisco's Motion for Release of Court Record, dated May 15, 2012.
- Third-Party Movant City and County of San Francisco's Memorandum of Points and Authorities in Support of Motion for Release of Court Record, dated April 23, 2012.
- Ms. L.'s Opposition to Third Party Movant City and County of San Francisco's Motion for Release of Court Record, dated May 10, 2012.
- Reply of Third-Party Movant City and County of San Francisco to Ms. L.'s Opposition to Motion for Release of Court Record, dated May 14, 2012.
- E-mail from Sherri Kaiser to Scott Emblidge, E-mail alerting Paula Canny to Sunshine Requests, dated May 15, 2012.
- E-mail from Scott Emblidge to David Waggoner, RE: Request for Protective Order, dated May 15, 2012.
- E-mail from Sherri Kaiser to Scott Emblidge, Re: Request for Protective Order, dated May 15, 2012.
- E-mail from David Waggoner to Scott Emblidge, Re: Request for Protective Order, dated May 15, 2012.
- E-mail from Peter Keith to Scott Emblidge, Further information about today's hearing, dated May 15, 2012.
- E-mail from Scott Emblidge to Attorneys, RE: Request for Protective Order, dated May 15, 2012.
- E-mail from Sherri Kaiser to Scott Emblidge, Re: Request for Protective Order, dated May 15, 2012.
- E-mail from David Waggoner to Scott Emblidge, Re: Further information about today's hearing, dated May 15, 2012.



- E-mail from Scott Emblidge to Attorneys, Re: Request for Protective Order, dated May 15, 2012.
- Mayor's Response to Sheriff's Request for Protective Order, dated May 16, 2012.
- E-mail from Peter Keith to Attorneys, Mayor's Response to Request for Protective Order - Date Corrected, dated May 16, 2012.
- Order Re: Sheriff's Request For Protective Order, dated May 16, 2012.
- Special Meeting of the Ethics Commission, Monday, April 23, 2012 - 4:30 p.m. Transcript.
- E-mail from David Waggoner to Scott Emblidge, Sheriff's List of Expert Witnesses, dated May 17, 2012.
- E-mail from Sherri Kaiser to Attorneys, Re: Mayor's Reply Brief, dated May 18, 2012.
- Mayor Lee's Reply to Sheriff Mirkarimi's Brief on the Issues Specified by the Ethics Commission at its Meeting of April 23, 2012, dated May 17, 2012.
- Sheriff Ross Mirkarimi's List of Potential Expert Witnesses, dated May 17, 2012.
- Memorandum from the Office of the City Attorney re: Charges of Official Misconduct Against Sheriff Mirkarimi Summary of Meet and Confer Efforts; Hearing Procedure & Scheduling, dated May 25, 2012.
- [Proposed] Order Regarding Procedures for Discovery and Evidentiary Hearing, filed May 25, 2012.
- Mayor's Rebuttal Witness and Mayor's Objection to Sheriff's Witness, dated May 25, 2012.
- Ms. L's Request for Protective Order Prohibiting Public Dissemination of Video, dated May 29, 2012.
- Press Release - May 30, 2012 - Summary of Actions Taken at May 29, 2012 Meeting.
- Amended Charges of Official Misconduct, dated June 1, 2012.
- Declaration of Linnette Peralta Haynes, dated June 8, 2012.
- Declaration of Emin Tekin and Exhibits, dated February 26, 2012.
- Declaration of Deputy Chief of Staff Paul Henderson, dated June 8, 2012.
- Deputy Chief of Staff Paul Henderson Exhibits.
- Declaration of Chief San Francisco Probation Officer Wendy Still, dated June 8, 2012.
- Chief San Francisco Probation Officer Wendy Still Exhibits.
- Declaration of Interim San Francisco Sheriff Vicki Hennessy, dated June 8, 2012.
- Interim San Francisco Sheriff Vicki Hennessy Exhibits.
- Declaration of SFPD Inspector Richard Daniele and Exhibits, dated June 7, 2012.
- Declaration of Callie Williams and Exhibits, dated June 6, 2012.
- Callie Williams Additional Exhibits.
- Declaration of Mayor Edwin M. Lee, dated June 8, 2012.
- E-mail from Peter Keith to Scott Emblidge, Re: Scheduling Request, dated June 12, 2012.
- E-mail from Scott Emblidge to Attorneys, Re: Scheduling Request, dated June 13, 2012.
- Witness Christine Flores' Sworn Testimony, dated June 13, 2012.
- Witness Christine Flores' Sworn Testimony Transcripts Part 1, dated March 2, 2012.
- Witness Christine Flores' Sworn Testimony Transcripts Part 2, dated March 5, 2012.

- Declaration of Lenilyn De Leon, dated June 11, 2012.
- Declaration of Sheriff Ross Mirkarimi, dated June 13, 2012.
- Sheriff Ross Mirkarimi's Objections to Mayor's Fact Witness Declarations, filed June 13, 2012.
- The Mayor's (1) Objections to Witness Declarations and Requests for Cross-Examination of Declarants; (2) Subpoena Requests, dated June 13, 2012.
- Letter from City Attorney to John St. Croix, dated June 15, 2012, and Mayor's Exhibit 4 - The Video Statement of Ms. Lopez.
- Special Meeting of the Ethics Commission, Tuesday, May 29, 2012 - 5:30 p.m. Transcript.
- E-mail from Scott Emblidge to Attorneys, Re: Request for issuance of subpoena, dated June 14, 2012.
- Subpoena - Linnette Peralta Haynes, dated June 14, 2012.
- The Mayor's Objections to the Declaration of Sheriff Ross Mirkarimi and Request for Cross-Examination, dated June 15, 2012.
- Declaration of Ivory S. Madison, dated June 15, 2012.
- Ivory S. Madison Exhibits.
- Declaration of Abraham Mertens and Exhibits, dated June 17, 2012.
- Declaration of Michael Hennessey, dated June 1, 2012.
- Letter from City Attorney to Ethics Commission, Re: Charges Against Ross Mirkarimi, Sheriff of the City and County of San Francisco, dated June 18, 2012.
- Mayor's Brief Regarding Admissibility of Ms. Lopez's January 1 and January 4 Statements About Abuse and Exhibit, dated June 18, 2012
- Expert Declaration of Nancy K. D. Lemon and Exhibits, dated June 18, 2012.
- Expert Declaration of San Diego Chief of Police William Lansdowne and Exhibits, dated June 18, 2012.
- E-mail from Shepard Kopp to Attorneys, Re: Sheriff's Expert Witness Declaration and statement re: cross of Mayor's fact witnesses, dated June 18, 2012.
- Mayor's List of Additional Exhibits, dated June 20, 2012.
- Mayor's Exhibit 50.
- Mayor's Exhibits 78-79.
- Mayor's Exhibits 80-81.
- Sheriff's Exhibit, Terence Hallinan v. Committee on Bar Examiners, The State Bar of California.
- Press Release - June 20, 2012 - Summary of Actions Taken at June 19, 2012 Meeting - AMENDED
- Mayor's Request for Cross-Examination and Objections to Expert Declaration, dated June 22, 2012.
- Sheriff Ross Mirkarimi's Objections to Mayor's Expert Witness Declaration, and Request for Cross-Examination, dated June 22, 2012.
- Mayor's Objection to Sheriff's Exhibit, dated June 25, 2012.
- Letter from the City Attorney to the Ethics Commission, Re: Charges Against Ross Mirkarimi, Sheriff of the City and County of San Francisco, dated June 26, 2012.



- Summary of Stipulations and Remaining Disputes Regarding Madison and Mertens Declarations, dated June 26, 2012.
- Mayor's Exhibits 82 and 83 (Cover Sheet), dated June 26, 2012.
- Exhibit 82: ATT Records of Ross Mirkarimi and Eliana Lopez December 31, 2011-January 13, 2012.
- Exhibit 83: January 4, 2011 Communications Records (From Exhibits 1, 55-60, 80-82).
- Declaration of Eliana Lopez and Exhibits, dated June 26, 2012.
- Response to Sheriff Mirkarimi's Objection to the Expert Declaration of Nancy Lemon, dated June 27, 2012.
- Press Release - June 28, 2012 - Interim Rulings Made by Ethics Commission at its June 19, 2012 Meeting.
- Special Meeting of the Ethics Commission, Tuesday, June 19, 2012 - 5:00 p.m. Transcript.
- Mayor's Rebuttal Evidence and Exhibits, dated July 10, 2012.
- Mayor's Evidentiary Objections to Declaration of Eliana Lopez & Request for Cross-Examination, dated July 10, 2012.
- Sheriff's Request for Issuance of Subpoenas and Exhibits, dated July 11, 2012.
- Press Release - July 11, 2012 - Summary of Actions Taken at June 28 and 29, 2012 Meetings.
- Press Release - July 13, 2012 - Interim Rulings Made by Ethics Commission at its June 28 and 29, 2012 Meetings
- E-mail from City Attorney to Ethics Commission, Re: Mirkarimi Matter: Request for Conference Call Re: Sheriff's Subpoena Request, dated July 11, 2012.
- Letter from Paula Canny to Attorneys, Re: Testimony of Eliana Lopez, dated July 12, 2012.
- Special Meeting of the Ethics Commission, Thursday, June 28, 2012 - 5:30 p.m. Transcript.
- Letter from City Attorney to Ethics Commission, Re: Charges Against Ross Mirkarimi, Sheriff of the City and County of San Francisco, and Exhibits 84 and 87, dated July 11, 2012.
- Mayor's Opposition to Sheriff's Request for Subpoenas, dated July 17, 2012.
- Letter from Paula Canny to Attorneys, Re: Eliana Lopez, dated July 17, 2012.
- E-mail from David Waggoner to Attorneys, Re: Disputed Allegations, dated July 17, 2012.
- E-mail From Shepard Kopp to Attorneys, Re: Lemon and Lopez declarations, dated July 17, 2012.
- Sheriff's Summary of Stipulations and Remaining Disputes Regarding Declarations of Nancy Lemon and Eliana Lopez, dated July 17, 2012.
- E-mail from Sherri Kaiser to Attorneys, Re: Lemon and Lopez declarations, dated July 17, 2012.

**II. The Ethics Commission will continue its hearing on charges of official misconduct pending against Sheriff Ross Mirkarimi.**

Chairperson Hur asked DCA Kaiser to estimate the time it would take to examine Ms. Peralta Haynes. DCA Kaiser estimated that it would take two hours. Prior to the witness testimony, Eric Safire, counsel for Linnette Peralta Haynes stated that she has no relevant testimony.

Linnette Peralta Haynes was sworn in at 5:11 PM and was cross-examined by DCA Kaiser.

The Commission recessed for a break at 6:54 PM.

The Commission resumed the meeting at 7:03 PM.

After returning from break, the Commission heard discussions and objections to Ms. Lopez's declaration.

The Commission made the following interim rulings relating to the declaration of Eliana Lopez:

Eliana Lopez	<p>Objections sustained as to</p> <p>¶5, page 2, lines 1-3 ("and that Ivory ... were privileged.");</p> <p>¶6, line 7 ("and that her ... an attorney");</p> <p>¶7, lines 10-11 ("Ivory dispensed ... to me.");</p> <p>¶10, page 3, lines 1-2 ("I believed Ivory Madison.");</p> <p>¶12;</p> <p>¶13, page 3, lines 22-24 ("because this had ... woman for him."), line 25 ("Ivory ignored me."), lines 25-26 ("as my attorney,"), line 28 – page 4, line 1 ("Ivory did not listen to me."), lines 1-2 "That was the only statement that stopped her, and");</p> <p>¶14, lines 11-13 ("Perhaps Callie ... about custody.");</p> <p>¶15, lines 14-17 ("Callie Williams declared ... December 31, 2011."), lines 18-23 ("Finally,</p>	<p>Sheriff's Exhibits 1-4 are excluded.</p>
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	<p>contrary ... thoughts – Callie.”);</p> <p>¶16, page 4, line 25 – page 5, line 1 (“I believed, ... and development.”);</p> <p>¶17;</p> <p>¶19, lines 12-13 (“Ms. Haynes is ... counselor and”);</p> <p>¶24, lines 1-3 (Ross was not ... the video.”);</p> <p>¶25, lines 5-16 (In fact her ... custody of Theo.”); and</p> <p>¶26; and ¶28, line 26 (“a better and better parent to Theo”).</p>	
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Ms. Peralta Haynes’ testimony resumed at 7:18 PM. DCA Kaiser continued cross-examination. Her cross-examination finished at 7:50 PM.

Mr. Kopp began re-direct testimony of Ms. Peralta Haynes at 7:50 PM and finished at 7:55 PM.

DCA Kaiser conducted re-cross.

The Commission questioned Ms. Peralta Haynes starting at 7:59 PM.  
The witness was excused at 8:36 PM.

Eliana Lopez and her interpreter were sworn in at 8:45 PM. DCA Keith began cross-examination at 8:46 PM. Ms. Lopez was excused for the evening, as her testimony would continue the following day.

### **III. Adjournment**

The meeting was adjourned at 9:29 PM.



Ethics Commission



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NOTICE OF SPECIAL MEETING**

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Room 263 or 416 City Hall  
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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

## PRESS RELEASE

BENEDICT Y. HUR  
CHAIRPERSON

JAMIEENNE S. STUDLEY  
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COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

**Contact:**  
**John St. Croix**  
**(415) 252-3100**

**For release:**  
**July 11, 2012**

### SUMMARY OF ACTIONS TAKEN AT JUNE 28 and 29, 2012 MEETINGS

At its special meetings on June 28 and 29, the San Francisco Ethics Commission continued the evidentiary phase of the hearing on the charges of official misconduct pending against Sheriff Ross Mirkarimi. The Commission took the following interim actions:

- With respect to the declarations filed by the Mayor's and the Sheriff's witnesses, the Commission preliminarily sustained, modified or overruled various objections by the parties (these rulings will be detailed in a subsequent document);
- With respect to the video of Eliana Lopez, the Commission preliminarily admitted the video;
- Heard testimony from and asked questions of the following live witnesses: Sheriff Ross Mirkarimi, Mayor Edwin M. Lee, and the Mayor's expert witness, San Diego Chief of Police William Lansdowne;
- Approved the following schedule:

Due Date	Item
July 2, 2012	<ul style="list-style-type: none"><li>• Eliana Lopez to resubmit and re-sign her declaration to attest that the declaration is submitted under penalty of perjury under the laws of the State of California</li></ul>
July 10, 2012	<ul style="list-style-type: none"><li>• The Mayor to provide objections to the declaration of Eliana Lopez</li><li>• The Mayor to identify rebuttal witnesses, if any</li><li>• The Sheriff to advise whether Former Sheriff Michael Hennessey will appear for live testimony</li></ul>
July 17, 2012	<ul style="list-style-type: none"><li>• The Sheriff to respond to objections to the declaration of Eliana Lopez</li><li>• The parties, having met and conferred, to provide stipulation regarding the expert declaration of Nancy K.D. Lemon</li><li>• The Sheriff to identify the portions of allegations in the</li></ul>

	Amended Charges of Official Misconduct, Bill of Particulars, that he disputes
July 18, 2012	Ethics Commission meeting (5 p.m., Room 416 City Hall): <ul style="list-style-type: none"> <li>• Linnette Peralta Haynes is expected to provide live testimony</li> <li>• Eliana Lopez is expected to provide live testimony or appear remotely</li> <li>• Former Sheriff Michael Hennessey may provide live testimony</li> </ul>
July 19, 2012	Ethics Commission meeting (5 p.m., Room 416 City Hall): <ul style="list-style-type: none"> <li>• Former Sheriff Michael Hennessey may provide live testimony</li> <li>• The Mayor's rebuttal witness(es) may provide live testimony</li> </ul>
August 10, 2012	The parties to provide findings of fact and briefing on legal issues
August 16, 2012	Ethics Commission meeting (9 a.m., Room 263 City Hall)

By votes of 5-0 at the end of each day, the Commission approved the above interim decisions made regarding evidence and scheduling. This special meeting will continue on Wednesday, July 18, 2012 at 5:00 p.m. in Room 263 City Hall.

#

The Ethics Commission, established in November 1993, serves the public, City employees and officials and candidates for public office through education and enforcement of ethics laws. Its duties include: filing and auditing of campaign finance disclosure statements, lobbyist and campaign consultant registration and regulation, administration of the public financing program, whistleblower program, conflict of interest reporting, investigations and enforcement, education and training, advice giving and statistical reporting.

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**[DRAFT]**  
Minutes of the Special Meeting of  
The San Francisco Ethics Commission  
July 19, 2012  
Room 416, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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The complete court reporter's transcript of the July 19, 2012 special meeting has been posted on the Commission's website. A copy of the transcript is also available for review at the Commission office during regular business hours.

**I. Call to order and roll call**

Chairperson Hur called the meeting to order at 4:58 p.m.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamiene S. Studley, Vice-Chairperson; Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner; Paul A. Renne, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator

COUNSEL FOR THE ETHICS COMMISSION: Scott Emblidge.

COUNSEL FOR THE MAYOR: Peter J. Keith, Deputy City Attorney (DCA), Sherri S. Kaiser, DCA.

OTHERS PRESENT: Sheriff Ross Mirkarimi; Shepard S. Kopp, counsel for Sheriff Mirkarimi; David Waggoner, counsel for Sheriff Mirkarimi; and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Written Charges of Official Misconduct, filed March 21, 2012.
- Memorandum from the Office of the City Attorney re: Legal Counsel for Ethics Commission and Board of Supervisors for Official Misconduct Charges, dated April 12, 2012.
- Staff Memorandum re: Recommendations on hearing on charges of official misconduct, dated April 17, 2012.
- Letter to the Ethics Commission and City Attorney from David Waggoner and Shepard Kopp, Counsel for Sheriff Mirkarimi, re: Agenda for April 23, 2012 meeting, including correspondence with Deputy City Attorney Keith, dated April 23, 2012.
- Memorandum from DCA Keith and DCA Kaiser, Counsel for the Mayor, re: Hearing on Charges of Official Misconduct Against Sheriff Ross Mirkarimi, dated April 23, 2012.
- Press Release - April 24, 2012 - Summary of Actions Taken at April 23, 2012 Meeting.

- Mayor Lee's Opening Brief on the Issues Specified by the Ethics Commission, dated April 30, 2012.
- Mayor's Initial List of Fact Witnesses, dated April 30, 2012.
- Letter to the Ethics Commission from the City Attorney, re: Sheriff Mirkarimi's Duty to Cooperate with the Official Misconduct Investigation and the Role of the Ethics Commission in that Investigation, dated April 30, 2012.
- Mayor's Initial List of Subject-Matter Expert Witnesses, dated May 7, 2012.
- Sheriff Ross Mirkarimi's Opening Brief, dated May 7, 2012.
- Sheriff Ross Mirkarimi's List of Potential Fact Witnesses, dated May 10, 2012.
- Mayor's Supplemental Disclosure of Subject-Matter Expert Witnesses, dated May 10, 2012.
- E-mail from David Waggoner to Scott Emblidge, Request for Protective Order, dated May 15, 2012.
- Request for Protective Order, dated May 15, 2012.
- E-mail from Sherri Kaiser to Scott Emblidge, Request for Protective Order -- Court papers, dated May 15, 2012.
- Order Granting Third-Party Movant City and County of San Francisco's Motion for Release of Court Record, dated May 15, 2012.
- Third-Party Movant City and County of San Francisco's Memorandum of Points and Authorities in Support of Motion for Release of Court Record, dated April 23, 2012.
- Ms. L.'s Opposition to Third Party Movant City and County of San Francisco's Motion for Release of Court Record, dated May 10, 2012.
- Reply of Third-Party Movant City and County of San Francisco to Ms. L.'s Opposition to Motion for Release of Court Record, dated May 14, 2012.
- E-mail from Sherri Kaiser to Scott Emblidge, E-mail alerting Paula Canny to Sunshine Requests, dated May 15, 2012.
- E-mail from Scott Emblidge to David Waggoner, RE: Request for Protective Order, dated May 15, 2012.
- E-mail from Sherri Kaiser to Scott Emblidge, Re: Request for Protective Order, dated May 15, 2012.
- E-mail from David Waggoner to Scott Emblidge, Re: Request for Protective Order, dated May 15, 2012.
- E-mail from Peter Keith to Scott Emblidge, Further information about today's hearing, dated May 15, 2012.
- E-mail from Scott Emblidge to Attorneys, RE: Request for Protective Order, dated May 15, 2012.
- E-mail from Sherri Kaiser to Scott Emblidge, Re: Request for Protective Order, dated May 15, 2012.
- E-mail from David Waggoner to Scott Emblidge, Re: Further information about today's hearing, dated May 15, 2012.
- E-mail from Scott Emblidge to Attorneys, Re: Request for Protective Order, dated May 15, 2012.
- Mayor's Response to Sheriff's Request for Protective Order, dated May 16, 2012.

- E-mail from Peter Keith to Attorneys, Mayor's Response to Request for Protective Order - Date Corrected, dated May 16, 2012.
- Order Re: Sheriff's Request For Protective Order, dated May 16, 2012.
- Special Meeting of the Ethics Commission, Monday, April 23, 2012 - 4:30 p.m. Transcript.
- E-mail from David Waggoner to Scott Emblidge, Sheriff's List of Expert Witnesses, dated May 17, 2012.
- E-mail from Sherri Kaiser to Attorneys, Re: Mayor's Reply Brief, dated May 18, 2012.
- Mayor Lee's Reply to Sheriff Mirkarimi's Brief on the Issues Specified by the Ethics Commission at its Meeting of April 23, 2012, dated May 17, 2012.
- Sheriff Ross Mirkarimi's List of Potential Expert Witnesses, dated May 17, 2012.
- Memorandum from the Office of the City Attorney re: Charges of Official Misconduct Against Sheriff Mirkarimi Summary of Meet and Confer Efforts; Hearing Procedure & Scheduling, dated May 25, 2012.
- [Proposed] Order Regarding Procedures for Discovery and Evidentiary Hearing, filed May 25, 2012.
- Mayor's Rebuttal Witness and Mayor's Objection to Sheriff's Witness, dated May 25, 2012.
- Ms. L's Request for Protective Order Prohibiting Public Dissemination of Video, dated May 29, 2012.
- Press Release - May 30, 2012 - Summary of Actions Taken at May 29, 2012 Meeting.
- Amended Charges of Official Misconduct, dated June 1, 2012.
- Declaration of Linnette Peralta Haynes, dated June 8, 2012.
- Declaration of Emin Tekin and Exhibits, dated February 26, 2012.
- Declaration of Deputy Chief of Staff Paul Henderson, dated June 8, 2012.
- Deputy Chief of Staff Paul Henderson Exhibits.
- Declaration of Chief San Francisco Probation Officer Wendy Still, dated June 8, 2012.
- Chief San Francisco Probation Officer Wendy Still Exhibits.
- Declaration of Interim San Francisco Sheriff Vicki Hennessy, dated June 8, 2012.
- Interim San Francisco Sheriff Vicki Hennessy Exhibits.
- Declaration of SFPD Inspector Richard Daniele and Exhibits, dated June 7, 2012.
- Declaration of Callie Williams and Exhibits, dated June 6, 2012.
- Callie Williams Additional Exhibits.
- Declaration of Mayor Edwin M. Lee, dated June 8, 2012.
- E-mail from Peter Keith to Scott Emblidge, Re: Scheduling Request, dated June 12, 2012.
- E-mail from Scott Emblidge to Attorneys, Re: Scheduling Request, dated June 13, 2012.
- Witness Christine Flores' Sworn Testimony, dated June 13, 2012.
- Witness Christine Flores' Sworn Testimony Transcripts Part 1, dated March 2, 2012.
- Witness Christine Flores' Sworn Testimony Transcripts Part 2, dated March 5, 2012.
- Declaration of Lenilyn De Leon, dated June 11, 2012.
- Declaration of Sheriff Ross Mirkarimi, dated June 13, 2012.

- Sheriff Ross Mirkarimi's Objections to Mayor's Fact Witness Declarations, filed June 13, 2012.
- The Mayor's (1) Objections to Witness Declarations and Requests for Cross-Examination of Declarants; (2) Subpoena Requests, dated June 13, 2012.
- Letter from City Attorney to John St. Croix, dated June 15, 2012, and Mayor's Exhibit 4 - The Video Statement of Ms. Lopez.
- Special Meeting of the Ethics Commission, Tuesday, May 29, 2012 - 5:30 p.m. Transcript.
- E-mail from Scott Emblidge to Attorneys, Re: Request for issuance of subpoena, dated June 14, 2012.
- Subpoena - Linnette Peralta Haynes, dated June 14, 2012.
- The Mayor's Objections to the Declaration of Sheriff Ross Mirkarimi and Request for Cross-Examination, dated June 15, 2012.
- Declaration of Ivory S. Madison, dated June 15, 2012.
- Ivory S. Madison Exhibits.
- Declaration of Abraham Mertens and Exhibits, dated June 17, 2012.
- Declaration of Michael Hennessey, dated June 1, 2012.
- Letter from City Attorney to Ethics Commission, Re: Charges Against Ross Mirkarimi, Sheriff of the City and County of San Francisco, dated June 18, 2012.
- Mayor's Brief Regarding Admissibility of Ms. Lopez's January 1 and January 4 Statements About Abuse and Exhibit, dated June 18, 2012
- Expert Declaration of Nancy K. D. Lemon and Exhibits, dated June 18, 2012.
- Expert Declaration of San Diego Chief of Police William Lansdowne and Exhibits, dated June 18, 2012.
- E-mail from Shepard Kopp to Attorneys, Re: Sheriff's Expert Witness Declaration and statement re: cross of Mayor's fact witnesses, dated June 18, 2012.
- Mayor's List of Additional Exhibits, dated June 20, 2012.
- Mayor's Exhibit 50.
- Mayor's Exhibits 78-79.
- Mayor's Exhibits 80-81.
- Sheriff's Exhibit, Terence Hallinan v. Committee on Bar Examiners, The State Bar of California.
- Press Release - June 20, 2012 - Summary of Actions Taken at June 19, 2012 Meeting - AMENDED
- Mayor's Request for Cross-Examination and Objections to Expert Declaration, dated June 22, 2012.
- Sheriff Ross Mirkarimi's Objections to Mayor's Expert Witness Declaration, and Request for Cross-Examination, dated June 22, 2012.
- Mayor's Objection to Sheriff's Exhibit, dated June 25, 2012.
- Letter from the City Attorney to the Ethics Commission, Re: Charges Against Ross Mirkarimi, Sheriff of the City and County of San Francisco, dated June 26, 2012.
- Summary of Stipulations and Remaining Disputes Regarding Madison and Mertens Declarations, dated June 26, 2012.
- Mayor's Exhibits 82 and 83 (Cover Sheet), dated June 26, 2012.

- Exhibit 82: ATT Records of Ross Mirkarimi and Eliana Lopez December 31, 2011-January 13, 2012.
- Exhibit 83: January 4, 2011 Communications Records (From Exhibits 1, 55-60, 80-82).
- Declaration of Eliana Lopez and Exhibits, dated July 2, 2012.
- Response to Sheriff Mirkarimi's Objection to the Expert Declaration of Nancy Lemon, dated June 27, 2012.
- Press Release - June 28, 2012 - Interim Rulings Made by Ethics Commission at its June 19, 2012 Meeting.
- Special Meeting of the Ethics Commission, Tuesday, June 19, 2012 - 5:00 p.m. Transcript.
- Mayor's Rebuttal Evidence and Exhibits, dated July 10, 2012.
- Mayor's Evidentiary Objections to Declaration of Eliana Lopez & Request for Cross-Examination, dated July 10, 2012.
- Sheriff's Request for Issuance of Subpoenas and Exhibits, dated July 11, 2012.
- Press Release - July 11, 2012 - Summary of Actions Taken at June 28 and 29, 2012 Meetings.
- Press Release - July 13, 2012 - Interim Rulings Made by Ethics Commission at its June 28 and 29, 2012 Meetings
- E-mail from City Attorney to Ethics Commission, Re: Mirkarimi Matter: Request for Conference Call Re: Sheriff's Subpoena Request, dated July 11, 2012.
- Letter from Paula Canny to Attorneys, Re: Testimony of Eliana Lopez, dated July 12, 2012.
- Special Meeting of the Ethics Commission, Thursday, June 28, 2012 - 5:30 p.m. Transcript.
- Letter from City Attorney to Ethics Commission, Re: Charges Against Ross Mirkarimi, Sheriff of the City and County of San Francisco, and Exhibits 84 and 87, dated July 11, 2012.
- Mayor's Opposition to Sheriff's Request for Subpoenas, dated July 17, 2012.
- Letter from Paula Canny to Attorneys, Re: Eliana Lopez, dated July 17, 2012.
- E-mail from David Waggoner to Attorneys, Re: Disputed Allegations, dated July 17, 2012.
- E-mail From Shepard Kopp to Attorneys, Re: Lemon and Lopez declarations, dated July 17, 2012.
- Sheriff's Summary of Stipulations and Remaining Disputes Regarding Declarations of Nancy Lemon and Eliana Lopez, dated July 17, 2012.
- E-mail from Sherri Kaiser to Attorneys, Re: Lemon and Lopez declarations, dated July 17, 2012.
- Special Meeting of the Ethics Commission, Friday, June 29, 2012 - 9:04 a.m. Transcript - Part I.
- Special Meeting of the Ethics Commission, Friday, June 29, 2012 - 1:05 p.m. Transcript - Part II.
- Letter from City Attorney to Ethics Commission, Re: Charges Against Ross Mirkarimi, Sheriff of the City and County of San Francisco, and Exhibits, dated July 18, 2012.

**II. The Ethics Commission will continue its hearing on charges of official misconduct pending against Sheriff Ross Mirkarimi.**

Deputy City Attorney (“DCA”) Keith resumed questioning Eliana Lopez at 5:02 p.m., continuing from June 18, 2012.

The Commission recessed for 15 minutes at 7:03 p.m.

The Commission reconvened at 7:18 p.m.

Shepard Kopp began his re-direct of Ms. Lopez at 7:21 p.m.

The Commissioners began to question Ms. Lopez at 7:31 p.m.

The Commission recessed for 10 minutes at 8:15 p.m.

The Commission reconvened at 8:25 p.m.

The Commission and parties discussed the admission of testimony and exhibits. The Commission made the following interim rulings relating to the declarations of Callie Williams, Christine Flores, Nancy K.D. Lemon, and Inspector Mike Becker. (The Commission’s interim rulings were published on August 2, 2012, and are available on the Ethics Commission’s website.)

Callie Williams	¶9 lines 7-11 (“Eliana told me...with her.”) admitted.	
Christine Flores	Oral objections heard and considered on July 19, 2012. Objections overruled. Official transcripts of evidentiary hearing in which Ms. Flores testified and was cross-examined are admitted to the extent that they are relevant to helping the Commission determine the severity of the conduct on December 31, 2011 and to the extent that they impeach the Sheriff’s testimony.	
Nancy K.D. Lemon (expert)	Objections sustained as to: ¶4, line 27, bullet point vi (“Mr. Mirkarimi ... unreformed batterer.”); ¶4, page 3, lines 1-2, bullet point vii (“Sheriff	Mayor’s Exhibit 75 is excluded. Mayor’s Exhibits 63-74 are admitted.

	<p>Mirkarimi ... domestic violence.”);</p> <p>¶¶ 64-75;</p> <p>¶¶ 82-86;</p> <p>¶¶ 95-96, 128;</p> <p>¶ 135, lines 23-25 (“Ms. Williams reported ... safety until 1/4/12. (Id.)”);</p> <p>¶¶ 142, 158, 160, 164-183; and</p> <p>¶¶ 185-190.</p> <p>The Lemon declaration is otherwise admitted.</p>	
Mayor’s Rebuttal Witness – Inspector Mike Becker, SFPD	Commission determined that it was not necessary to receive live testimony from Inspector Becker.	Mayor’s Exhibits 84 and 86 are admitted; Mayor’s Exhibits 85 and 87 are excluded.

Following the discussion of admissible testimony and exhibits, the Commission and parties discussed the briefing and hearing schedule.

The actions taken by the Commission during the meetings of July 18 and 19, 2012, are summarized as follows:

- Heard testimony from and asked questions of the following live witnesses: Linnette Peralta Haynes and Eliana Lopez;
- With respect to the declarations filed by the Mayor’s and the Sheriff’s witnesses, the Commission preliminarily sustained, modified or overruled various objections by the parties;
- Determined that it would not be necessary to receive live testimony from the Mayor’s rebuttal witness, Inspector Mike Becker, SFPD;
- Denied the Sheriff’s request for the issuance of subpoenas for witnesses to impeach the credibility of the Mayor;
- Approved the following schedule:

Due Date	Item
August 6, 2012	<ul style="list-style-type: none"> <li>• The parties to exchange findings of fact related to paragraphs 6-8, 19-24, 26, and 30 of the Amended Charges of Official Misconduct.</li> <li>• Each party may include up to five additional facts with supporting evidence to prove their case.</li> </ul>
August	<ul style="list-style-type: none"> <li>• The parties to jointly submit (in pdf and Microsoft Word format) a 3-column chart</li> </ul>



10, 2012	<p>setting forth the parties' positions on the proposed findings of fact, with citations to evidence. A sample chart is attached hereto as Exhibit A.</p> <ul style="list-style-type: none"> <li>• The parties to submit briefs, limited to 25 pages each, which should include each party's position on the proper construction of Charter section 15.105's definition of official misconduct.</li> </ul>
August 16, 2012	<p>Ethics Commission meeting (9 a.m., Room 263 City Hall)</p> <ul style="list-style-type: none"> <li>• The parties are permitted to make oral closing arguments, which may cover both factual and legal questions at issue and which will be limited to 45 minutes each. The Mayor shall present first. The Mayor may elect to reserve some of his 45 minutes for rebuttal.</li> <li>• The Commission may then question the parties on the legal or factual issues.</li> <li>• The Commission will then take public comment on all issues relating to this continuing special meeting, including the interim rulings adopted by the Commission during the course of the special meeting</li> <li>• The Commission may then deliberate and vote on whether to recommend to the Board of Supervisors that the charges against the Sheriff be sustained.</li> </ul>

The hearing was scheduled to continue on Thursday, August 16, 2012 at 9 a.m. in Room 263 City Hall.

### **III. Adjournment**

The meeting was adjourned at 10:16 p.m.



**San Francisco  
Ethics Commission**



25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

**Date:** July 13, 2012

**Re:** Notice of Consideration of Proposed Regulations at the July 23, 2012 Meeting  
of the Ethics Commission

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At its regular meeting on Monday, July 23, 2012, at 5:30 p.m. in Room 400 City Hall, the San Francisco Ethics Commission will discuss and take possible action to amend Ethics Commission Regulations 1.126-1 and 1.126-2. These amendments make technical changes and help to clarify that the term "an individual holding a City elective office" includes any committee controlled by that individual formed to support that individual's candidacy to a local or state office.

The proposed amendments, along with a staff report, will be available from the Commission office and on its website.

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Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF REGULAR MEETING**

**July 23, 2012 5:30 P.M.**

**and AGENDA**

**Room 400 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

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**NOTE: No business will be conducted at this meeting related to the Mayor's suspension of the Sheriff.**

- I. Call to order and roll call.**
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**
- III. Consideration of amendments to the Campaign Finance Reform Ordinance (CFRO), San Francisco Campaign and Governmental Conduct Code section 1.100 et seq., to require that all campaign statements submitted to the Ethics Commission be filed electronically. Recently, the State Legislature passed AB2452, which permits local government agencies to require local candidates and committees to file campaign disclosure reports electronically, thereby eliminating the need for paper filings. Staff recommends that the Commission approve amendments to require the electronic filing of campaign statements submitted to the Ethics Commission. The draft amendments and a staff report are available at the Commission office and on the Commission website. (Discussion and possible action.)**
- IV. Consideration of amendments to regulations for section 1.126 of the CFRO. The proposed amendments would clarify the scope of section 1.126, including the application of section 1.126 to local officials seeking election to state office, and address other technical changes. The draft regulations and a staff report are available at the Commission office and on the Commission website. (Discussion and possible action.)**
- V. Closed session. (Discussion and possible action.)**

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

- VI. Discussion and vote regarding closed session action and deliberations. (Discussion and possible action.)

Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation as plaintiff.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

- VII. Minutes of the Commission's regular meeting of March 26, 2012 and special meetings of April 13, 2012, April 23, 2012, May 29, 2012, June 19, 2012, June 28, 2012, and June 29, 2012. (Discussion and possible action.)
- VIII. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Discussion.)
- IX. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- XI. Adjournment.

**Know Your Rights Under the Sunshine Ordinance**

*Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Andrea Ausberry by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [saff@sfgov.org](mailto:saff@sfgov.org). Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Ausberry or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>*

*If any materials related to an item on this agenda have been distributed to the Ethics Commission after distribution of the agenda packet, those materials are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.*

*The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.*

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*This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.*

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*Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site [www.sfethics.org](http://www.sfethics.org)*

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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

AMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: July 18, 2012

To: Members, Ethics Commission

From: John St. Croix, Executive Director

By: Steven Massey, Information Technology Officer

A handwritten signature in black ink, appearing to be "J. St. Croix", is written over the "By:" line.

Re: Proposed Amendments to the Campaign Finance Reform Ordinance Section 1.112

## Introduction

The Ethics Commission ("Commission") is the local filing officer for campaign finance statements filed by City elected officers, candidates for City elective office, their controlled committees, committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in the City, and county general purpose committees. California Government Code section 84215(d) requires committees that file campaign disclosure statements to submit an original signed paper statement and a duplicate paper copy. Currently, the original signed paper statement is considered the official record for audits and any other official purpose.

In addition, Government Code section 84605 requires *state* committees – as opposed to the *local* committees that file with the Commission – that have financial activity exceeding certain thresholds to file electronic copies of statements with the Secretary of State. State law does not require local committees that file with local filing officers to do so electronically. Campaign Finance Reform Ordinance (CFRO) section 1.112 requires certain City or county committees that exceed a financial activity threshold to file copies of statements in electronic format with the Commission, in addition to the original and duplicate paper filings. Until recently, under state law, the Commission did not have the authority to eliminate the need to file duplicative paper filings, although it is more costly and inconvenient for the Commission and the local committees to continue to process and submit paper filings.

Since at least 2007, staff has worked to address the consolidation of paper and electronic filings. Paper statements are resource intensive – they must be manually processed and entered into the Commission's system, scanned, and filed, before they can be accessed by either the staff or the public. During a filing deadline, significant staff resources are devoted to processing paper statements instead of assisting committees or the public interested in viewing the statements themselves.

For committees that file electronic statements in addition to paper statements, they must first submit electronic statements. After the committees submit their electronic statements, they must print them out, obtain the necessary original signatures, and then deliver them to the Commission. Committees often pay for courier services to obtain signatures on statements and deliver the statements to the Commission's office on the eve of a filing deadline.

Electronic statements are made available on the Commission's web site within seconds of submission. However, currently, certain types of filers including those whose activities do not exceed the electronic financial activity threshold are not required to file electronically with the Ethics Commission. For this reason, the electronic data available to the public is always incomplete. Over the past few years, public demand for complete electronic campaign finance data has increased, where the demand to view paper statements in the Commission's office has tremendously decreased. Campaign finance data is also only searchable if it is submitted electronically; such information submitted on paper statements cannot be easily examined and reviewed by either members of the public or staff.

### **Assembly Bill (AB) 2452**

This summer, the Legislature enacted AB 2452, an amendment to the Government Code that authorizes local jurisdictions to move to an electronic filing system for campaign statements filed by local committees that meet certain financial activity thresholds. Under AB 2452, local jurisdictions that wish move to such a system must approve an ordinance that specifically requires electronic filing and that makes certain legislative findings.

AB 2452 was the culmination of years of work by Commission staff:

- On September 26, 2007, staff provided testimony to a joint Fair Political Practices Commission (FPPC) and Secretary of State panel on whether campaigns that file reports electronically can be exempted from submitting paper statements. Staff spoke in support of moving to electronic filing.
- Staff provided extensive comments to the FPPC Chairman's Task Force on the Political Reform Act in support of filing campaign finance statements electronically. On January 19, 2011, the Task Force recommended that electronic filings should become the filings of record for audit and official purposes and that the Legislature should be encouraged to move forward on legislation.
- Staff worked with the Mayor's office to introduce state legislation to authorize local legislative bodies to require committees to file local campaign finance statements in electronic format as the official record for audits and any other official purpose. Under the legislation, committees that file in electronic format would no longer be required to file paper copies of the same statement.
- On February 24, 2012, Assemblyman Tom Ammiano introduced the proposed legislation as AB 2452.
- At the March 14, 2012 meeting of the San Francisco State Legislation Committee, staff proposed that the City should be the sponsor of the AB 2452. The Committee, by a vote of 7-0, agreed to sponsor the legislation.
- At its April 5, 2012 meeting, the FPPC adopted a position of "support" for AB 2452.



- On May 1, 2012, staff testified at the California State Assembly Committee on Elections and Redistricting in support of AB 2452. The Committee passed the bill by a vote of 5-0.
- On May 21, 2012, the State Assembly passed the bill by a vote of 77-0.
- On June 19, 2012, staff testified at the California State Senate Elections and Constitutional Amendments Committee in support of AB 2452. The Committee passed the bill by a vote of 7-0.
- On July 2, 2012, the State Senate passed the bill by a vote of 38-0.
- On July 13, 2012, Governor Brown approved AB 2452.

AB 2452 requires amendments to the CFRO should the Commission decide to make electronic filings the official document of record for legal and audit purposes and eliminate the paper filing requirement. Staff strongly recommends that the Commission take this step. In addition, staff proposes additional changes to the CFRO to streamline the filing of campaign finance statements. The operative date of AB 2452 will be January 1, 2013.

This memorandum discusses the proposed changes and sets forth six decision points for the Commission's consideration. The proposed changes will also require approval from the Board of Supervisors. Under CFRO section 1.103, the Board of Supervisors may only amend the CFRO if:

- a. The amendment furthers the purpose of the CFRO;
- b. The Ethics Commission approves the proposed amendments in advance by at least a 4/5 vote of all its members;
- c. The proposed amendment is available for public review at least 30 days before the amendment is considered by the Board or any of its committees; and
- d. The Board of Supervisors approves the proposed amendment by at least a 2/3 vote of all its members.

## **Discussion and Decision Points**

### **Section 1. Findings.**

AB 2452 requires a local ordinance authorizing electronic filing to include a legislative finding that the electronic filing system will operate securely and effectively and would not unduly burden filers.

The Commission currently provides an electronic filing system free of charge for any committee to use to comply with electronic filing requirements. The majority of filers file statements electronically without any difficulty. For committees that require assistance, staff is available to walk users through the electronic system. By virtue of the system being online, staff is able to simultaneously view the form-in-progress with the filer, and provide assistance by phone or e-mail to respond to a filer's specific concerns. In the past few years, many committees not subject to local electronic filing requirements have requested to use the Commission's electronic filing system to complete campaign statements because it is easier to complete the forms using the electronic filing system than it is to fill out the paper forms. One reason that it is more

convenient is that the electronic filing system automatically tabulates all of the financial transactions listed in the campaign statement.

Local committees have been using the Commission's electronic filing system to submit campaign finance statements since 1998. The current version of the electronic filing system has been in operation since 2008. The Commission's electronic filing system is shared by over 20 local filing officers in California. The Commission's system accepts filings in the Secretary of State's .CAL electronic filing format established in 2001.

The Commission's electronic filing system's transmissions are logged and encrypted. Committee accounts are protected by login ID and passwords. All electronic filings are backed up in multiple locations and provide greater security than the Commission's paper archives.

Proposed Section 1 satisfies the requirements of AB 2452.

**Decision Point 1:**

Shall the Commission approve the proposed findings in Section 1, as set forth on page 1, line 10 through page 2, lines 19 of the draft legislation?

**Section 2. Amendments to Section 1.112**

**a. Section 1.112(a)**

Staff proposes the deletion of the words "at the same time a copy of" on page 3, line 3 of current section 1.112(a)(1). Because no paper copies of statements will be necessary, this language would be superfluous.

**Decision Point 2:**

Shall the Commission approve the changes to the language as set forth on page 3, line 3 of section 1.112(a)(1) of the draft legislation?

**b. Section 1.112(b): Committees Subject to Electronic Filing Requirements**

AB 2452 authorizes local jurisdictions to require local committees to file electronically only if they meet certain financial activity thresholds. To be subject to local electronic filing requirements, an elected officer, candidate, committee or other person must receive contributions or make expenditures that total \$1,000 or more in a calendar year. Currently, CFRO section 1.112(b)(1) requires a committee to file electronically only if it receives contributions or makes expenditures that total \$5,000 or more in a calendar year. To conform with the permitted thresholds under state law, staff proposes reducing the local electronic filing threshold to \$1,000.

Staff believes that lowering the electronic filing threshold to \$1,000 will not unduly burden committees. In fact, staff believes that both committees and the public would be better served by lowering the threshold to \$1,000.

For some time, there has been a disconnect between filing electronically and filing a FPPC Form 460. As stated above, CFRO section 1.112(b)(1) requires a committee to file electronically only if it receives contributions or makes expenditures that total \$5,000 or more in a calendar year. The most commonly filed campaign statement, the FPPC Form 460, is required to be used if the committee receives contributions or makes expenditures that total \$1,000 or more in a calendar year. Thus, committees that raise or spend between \$1,000 to \$4,999 file itemized paper statements but are currently exempt from the electronic filing requirement altogether. The consequences of this inconsistency are as follows:

- Committees that raise or spend between \$1,000 to \$4,999 during the first semi-annual period and subsequently raise or spend \$5,000 or more in a later period during the calendar year -- which qualifies the committee to file electronically -- must later re-enter previously disclosed contributions and expenditures filed in the first semi-annual period into the electronic filing system so that financial summary figures and cumulative contributions will calculate correctly on electronic statements. Committees that fail to enter transactions previously filed on paper often misreport cash balances, summary financial figures, or cumulative contributions from contributors that make multiple contributions to the same committee during a calendar year. The electronic filing system has no way to ascertain information previously disclosed only on a paper form. And those transactions are never made available to the public because the transactions were already disclosed and filed solely on a paper form.
- Researchers who download the electronic campaign finance transactions and summary data from the Commission's campaign finance database are often unaware that some committees filed initial statements on paper and filed subsequent statements in electronic format. During election periods, staff regularly warns members of the public and press to review campaign statements filed on paper, but not electronically, to account for activity disclosed before the committee qualified to file electronically.

**Decision Point 3:**

Shall the Commission approve the changes to the committees subject to electronic filing requirements as set forth on page 3, lines 22-24 of the draft legislation?

**c. Section 1.112(b)(1)(D): Candidates for County Central Committee**

Current CFRO section 1.112(b)(1) requires the following committees that meet the electronic filing financial activity threshold to file electronic statements:

- A committee controlled by a candidate for City elective office;
- A committee primarily formed to support or oppose a local measure or a candidate for City elective office; or
- A general purpose recipient, independent expenditure or major donor committee that qualifies, under state law, as a city or county general purpose committee in the City and County of San Francisco.

Currently, committees formed to support a candidate for a seat on a San Francisco County Central Committee are not required to file electronic statements. Since 2001, they have only

been required to file paper statements, regardless of financial activity, with the Ethics Commission.

While these committees are not subject to many provisions of the CFRO, many City elected officials have run for seats on a county central committee and have filed statements with the Commission regarding that political activity. And in general, there are many candidates for county central committee seats. For example, during the June 5, 2012 election, 107 candidates for County Central Committee filed statements with the Ethics Commission. In comparison, 64 candidates filed statements for Board of Supervisors in the November 11, 2010 election. The County Central Committee filers represent a significant portion of the paper filing volume and it would greatly increase efficiency to move these filers to electronic format. Many candidates for County Central Committee already use the Commission's electronic filing system to complete the forms because it is easier to complete than the paper forms, but have to print and file the electronically produced statement on paper.

In addition, the public would benefit from obtaining County Central Committee information online. Currently, County Central Committee candidate and primarily formed committee financial activity can only be reviewed on paper statements. By making the information available electronically, the public would benefit from more timely information and searchable transactions and summary data in the Commission's campaign finance database.

Staff recommends requiring County Central Committee candidate controlled committees and primarily formed committees to file electronically.

**Decision Point 4:**

Shall the Commission require persons seeking membership on County Central Committees to file electronically with the Commission, as set forth on page 4, lines 6-8 of the draft legislation?

**d. Section 1.112(c): Voluntary Electronic Filing**

Most committees file one of two primary types of campaign finance statements: FPPC Form 470 (Campaign Statements – Short Form) and FPPC Form 460 (Recipient Committee Campaign Statement).

The FPPC Form 470 is used by officeholders and candidates who:

- do not have a controlled committee;
- do not anticipate receiving contributions totaling \$1,000 or more during the calendar year; and
- do not anticipate spending \$1,000 or more during the calendar year.

The FPPC Form 470 itself does not disclose any financial information. Thus, the public would not gain any additional data if it obtained this form in electronic format. However, because some filers who do not meet the \$1,000 e-filing threshold may actually prefer to e-file, staff recommends that filers that do not reach the \$1,000 threshold be permitted to elect to file electronically. For this reason, staff recommends the adoption of new subsection 1.112(c).

**Decision Point 5:**

Shall the Commission approve new subsection 1.112(c), as set forth on page 4, lines 12-15 of the draft legislation?

**4. Overall approval of the draft amendments**

In section 1.112(b)(1)(C), on page 4, line 4, “city or” is removed since all local general purpose committees are county committees. To ensure that the Commission has fully considered and approved the changes set forth in the draft amendments, staff recommends that the Commission approve all of the changes set forth in the draft amendments, subject to changes otherwise approved by the Commission at its meeting on July 23, 2012.

**Decision Point 6:**

Shall the Commission approve the changes to CFRO section 1.112, as set forth in staff’s memorandum or as amended by the Commission at its July 23, 2012 meeting?

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[Campaign and Governmental Conduct Code – Requiring Electronic Filing of Campaign Statements]

**Ordinance amending the San Francisco Campaign and Governmental Conduct Code by amending section 1.112 to requiring the electronic filing of campaign statements submitted to the Ethics Commission.**

NOTE: Additions are single-underline italics Times New Roman; deletions are ~~strike-through italics Times New Roman~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

1. The Political Reform Act of 1974, Government Code section 81000, et seq., requires certain candidates and committees to file campaign statements and reports with local filing officers. The San Francisco Campaign and Governmental Conduct Code imposes additional filing requirements on local candidates and committees. These state and local filings disclose a candidate's contributors and the financial activity of committees. They also provide necessary information for local campaign finance initiatives such as San Francisco's public financing program.

2. In the decades since the enactment of the Political Reform Act, candidates and committees have complied with their filing requirements by filing paper copies of their campaign statements and reports with the appropriate local and state agencies. Locally, the San Francisco Ethics Commission has endeavored to make its paper filings readily available to the public through its website by scanning and posting these documents as portable document format (PDF) files. But to scan and post these filings requires a substantial amount



1 of staff time, particularly around filing deadlines when the public often desires immediate  
2 disclosure of campaign-related information.

3 3. In July 2012, the Legislature approved Assembly Bill 2452 (AB 2452),  
4 sponsored by Assemblyman Tom Ammiano, which authorizes local jurisdictions to require  
5 candidates and committees to forego paper filings and to instead file their required statements  
6 electronically. The Governor approved the legislation on July 13, 2012. The City and County  
7 of San Francisco sponsored the legislation, and the Ethics Commission played a significant  
8 role in ensuring its passage.

9 4. To conserve staff resources and make the information publicly available in a  
10 shorter time-frame and more usable format, the San Francisco Ethics Commission should  
11 take advantage of this recent change in state law. By moving to an electronic filing system,  
12 the Ethics Commission will no longer need to expend staff time and limited resources to  
13 accept, process, and store copious campaign statements as paper copies. The public will  
14 also be able to access the information disclosed in campaign statements in a more timely  
15 manner, by eliminating any manual processing of filings. An electronic filing system also  
16 allows the public to run searches and compile information more easily.

17 5. The Board of Supervisors finds that the Ethics Commission's electronic filing  
18 system will operate securely and effectively. The Board of Supervisors also finds that the  
19 electronic filing system would not unduly burden filers.

20 Section 2. The San Francisco Campaign and Governmental Conduct Code is hereby  
21 amended by amending Section 1.112, to read as follows:

22 SEC. 1.112. ELECTRONIC CAMPAIGN DISCLOSURE.

23 (a) FILING ELECTRONIC CAMPAIGN STATEMENTS.

24 (1) Filing Electronic Copies of Campaign Statements Required by State Law.

25 Whenever any committee that meets the requirements of Subsection (b) of this Section is

1 required by the California Political Reform Act, California Government Code Section 81000 et  
2 seq., to file a campaign disclosure statement or report with the Ethics Commission, the  
3 committee shall file ~~at the same time a copy of~~ the statement or report in an electronic format  
4 with the Ethics Commission, provided the Ethics Commission has prescribed the format at  
5 least 60 days before the statement or report is due to be filed.

6 (2) Filing Electronic Copies of Campaign Statements Required by Local Law.  
7 Whenever any committee is required to file a campaign disclosure statement or report with the  
8 Ethics Commission under this Chapter, the committee shall file the statement or report in an  
9 electronic format, provided the Ethics Commission has prescribed the format at least 60 days  
10 before the statement or report is due to be filed.

11 (3) Continuous Filing of Electronic Statements. Once a committee is subject  
12 to the electronic filing requirements imposed by this Section, the committee shall remain  
13 subject to the electronic filing requirements, regardless of the amount of contributions  
14 received or expenditures made during each reporting period, until the committee terminates  
15 pursuant to this Chapter and the California Political Reform Act, California Government Code  
16 Section 81000 et seq.

17 (4) Disclosure of Expenditure Dates. All electronic statements filed under  
18 this Section shall include the date any expenditure required to be reported on the statement  
19 was incurred, provided that the Ethics Commission's forms accommodate the reporting of  
20 such dates.

21 (b) COMMITTEES SUBJECT TO ELECTRONIC FILING REQUIREMENTS.

22 (1) A committee must file electronic copies of statements and reports if it  
23 receives contributions or makes expenditures that total \$5,0001,000 or more in a calendar year  
24 and is:

25 (A) a committee controlled by a candidate for City elective office;

1 (B) a committee primarily formed to support or oppose a local  
2 measure or a candidate for City elective office; or

3 (C) a general purpose recipient, independent expenditure or major  
4 donor committee that qualifies, under state law, as a ~~city or~~ county general purpose committee  
5 in the City and County of San Francisco; ~~or~~

6 (D) a committee primarily formed to support or oppose a person seeking  
7 membership on a San Francisco county central committee, including a committee controlled by the  
8 person seeking membership on a San Francisco county central committee.

9 (2) The Ethics Commission may require additional committees not listed in  
10 this Section to file electronically through regulations adopted at least 60 days before the  
11 statement or report is due to be filed.

12 (c) VOLUNTARY ELECTRONIC FILING. Any committee not required to file electronic  
13 statements by this Section may voluntarily opt to file electronic statements by submitting written notice  
14 to the Ethics Commission. A committee that opts to file electronic statements shall be subject to the  
15 requirements of this Section.

16 Section 3. Effective Date. This ordinance shall become effective 30 days from the  
17 date of passage. If the effective date is prior to January 1, 2013, the ordinance shall not  
18 become operative until January 1, 2013.

19 Section 4. This section is uncoded. In enacting this Ordinance, the Board intends to  
20 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
21 punctuation, charts, diagrams, or any other constituent part of the Campaign and  
22 Governmental Conduct Code that are explicitly shown in this legislation as additions,  
23 deletions, Board amendment additions, and Board amendment deletions in accordance with  
24 the "Note" that appears under the official title of the legislation.

1 APPROVED AS TO FORM:  
2 DENNIS J. HERRERA, City Attorney

3 By: \_\_\_\_\_  
4 ANDREW SHEN  
5 Deputy City Attorney  
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Assembly Bill No. 2452

CHAPTER 126

An act to add Section 84615 to the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor July 13, 2012. Filed with  
Secretary of State July 13, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2452, Ammiano. Political Reform Act of 1974: online disclosure.

The Political Reform Act of 1974 requires specified candidates, committees, slate mailer organizations, and lobbyists, lobbying firms, and lobbyist employers to file campaign statements and reports online or electronically with the Secretary of State, as specified. The act requires certain of these entities to also file campaign statements and reports with local filing officers, as specified.

This bill, with certain exceptions, would authorize a local government agency to require an elected officer, candidate, committee, or other person required to file specified statements, reports, or other documents to file those statements, reports, or other documents online or electronically with a local filing officer. The bill would prescribe criteria that must be satisfied by a local government agency that requires online or electronic filing of statements, reports, or other documents, as specified, including, among others, that the system be available free of charge to filers and to the public for viewing filings, and that the system include a procedure for filers to comply with the requirement that they sign statements and reports under penalty of perjury.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a  $\frac{2}{3}$  vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

*The people of the State of California do enact as follows:*

SECTION 1. Section 84615 is added to the Government Code, to read:

84615. A local government agency may require an elected officer, candidate, committee, or other person required to file statements, reports, or other documents required by Chapter 4 (commencing with Section 84100), except an elected officer, candidate, committee, or other person who receives contributions totaling less than one thousand dollars (\$1,000), and makes expenditures totaling less than one thousand dollars (\$1,000), in a calendar year, to file those statements, reports, or other documents online or

electronically with a local filing officer. A local government agency that requires online or electronic filing pursuant to this section shall comply with all of the following:

(a) The legislative body for the local government agency shall adopt an ordinance approving the use of online or electronic filing, which shall include a legislative finding that the online or electronic filing system will operate securely and effectively and would not unduly burden filers. The ordinance adopted by the legislative body for the local government agency may, at the discretion of that legislative body, specify that the electronic or online filing requirements apply only to specifically identified types of filings or are triggered only by identified monetary thresholds. In any instance in which the original statement, report, or other document is required to be filed with the Secretary of State and a copy of that statement, report, or other document is required to be filed with the local government agency, the ordinance may permit, but shall not require, that the copy be filed online or electronically.

(b) The online or electronic filing system shall only accept a filing in the standardized record format that is developed by the Secretary of State pursuant to paragraph (2) of subdivision (a) of Section 84602 and that is compatible with the Secretary of State's system for receiving an online or electronic filing.

(c) The online or electronic filing system shall ensure the integrity of the data transmitted and shall include safeguards against efforts to tamper with, manipulate, alter, or subvert the data.

(d) (1) The local filing officer shall issue to a person who files a statement, report, or other document online or electronically an electronic confirmation that notifies the filer that the statement, report, or other document was received. The confirmation shall include the date and the time that the statement, report, or other document was received by the filing officer and the method by which the filer may view and print the data received by the filing officer.

(2) A copy retained by the filer of a statement, report, or other document that was filed online or electronically and the confirmation issued pursuant to paragraph (1) that shows the filer timely filed the statement, report, or other document shall create a rebuttable presumption that the filer timely filed the statement, report, or other document.

(e) The date of filing for a statement, report, or other document that is filed online or electronically shall be the day that it is received by the local filing officer.

(f) The local filing officer shall make all the data filed available on the Internet in an easily understood format that provides the greatest public access. The data shall be made available free of charge and as soon as possible after receipt. The data made available on the Internet shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms or any bank account number required to be disclosed by the filer. The local filing officer shall make a complete, unredacted copy of any statement, report, or other



document filed pursuant to this section, including any street names, building numbers, and bank account numbers disclosed by the filer, available to any person upon request.

(g) The online or electronic filing system shall include a procedure for filers to comply with the requirement that they sign statements and reports under penalty of perjury pursuant to Section 81004.

(h) The local government agency shall enable filers to complete and submit filings free of charge.

(i) The local filing officer shall maintain, for a period of at least 10 years commencing from the date filed, a secured, official version of each online or electronic statement, report, or other document filed pursuant to this section, which shall serve as the official version of that record for purpose of audits and any other legal purpose. Data that has been maintained for at least 10 years may then be archived in a secure format.

(j) Notwithstanding any other provision of law, any statement, report, or other document filed online or electronically pursuant to this section shall not be required to be filed with the local filing officer in paper format.

SEC. 2. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.





# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

AMENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: July 13, 2012

To: Members, Ethics Commission

From: John St. Croix, Executive Director

By: Mabel Ng, Deputy Executive Director

Re: Amendments to regulations regarding CFRO section 1.126

Campaign and Governmental Conduct Code ("C&GC Code") section 1.126 (codified in the Campaign Finance Reform Ordinance, or CFRO) prohibits contributions to City elected officials from certain City contractors. Over the past several years, and most recently in a request for informal written advice, members of the regulated community and the press have asked whether section 1.126 applies to campaign contributions made to a City elected official seeking state elective office. Staff's response was yes, the section 1.126 contractor contribution ban applies to local officials seeking election to state office. However, in providing that advice, staff noted that Ethics Commission Regulation 1.126-2 might unnecessarily confuse the proper interpretation of CFRO section 1.126. For this reason, and to make other technical changes, staff proposes that the Commission amend Regulations 1.126-1 and 1.126-2, as set forth in this memo.

CFRO section 1.126 prohibits any person who contracts with the City, the San Francisco Unified School District, the San Francisco Community College District or certain state agencies, from making a political contribution to *an individual holding a City elective office* if the contract must be approved by that individual, the board on which that individual serves, or a state agency on whose board an appointee of that individual serves. The ban also applies prohibit contributions to a candidate for the office held by the individual or a committee controlled by such individual or candidate. The ban applies whenever the agreement or contract has a total anticipated or actual value of \$50,000 or more in a fiscal year; and it applies from the commencement of negotiations until the termination of negotiations for such contract or six months from the date the contract is approved. See C&GC Code § 1.126, reprinted at the end of this memo.

### I. The Advice Letter

In relevant portions of the advice letter, staff wrote:

You asked whether the City's ban on contributions from City contractors applies to a supervisor or other City elective officer who runs for State office instead of a local office. As you point out, section 1.126 bars a contractor from making a contribution to, among

others, “an individual holding City elective office,” and “a committee controlled by such an individual.” Ethics Commission Regulation 1.126-2 defines “a committee controlled by such individual” to include “either a committee formed to support or oppose a candidate for City elective office or committee formed to support or oppose a local ballot measure.” You claim that the “clear language of the regulation thereby limits the ‘a committee controlled by such an individual’” to “a committee supporting a City official’s election to another City office or a committee supporting or opposing a City ballot measure.” You thus seek confirmation that Regulation 1.126-2 “effectively excludes from the contractor ban committees supporting a City official’s election to state office and state ballot measure committees.”

As you note, the legislative history of section 1.126 does not specifically address whether the contribution ban applies to City elective officers seeking State office. However, Ethics staff has consistently advised that section 1.126 applies when the requisite factors exist, *i.e.*, *whenever* any individual City elective officer who must approve a City contract worth at least \$50,000 per year is seeking any elective office.

The reasons for this advice include the following. First, section 1.126(b)(1)(A) specifically prohibits a contractor from making a contribution to “an individual holding a City elective office if the contract must be approved by such individual.” Under the plain language of this subsection, *any* individual currently holding City elective office is subject to this restriction, and there is no further limitation that suggests this individual must be a candidate seeking a City elective office. Second, the purpose of section 1.126 is to prevent pay-to-play situations whereby in exchange for making a political contribution to an individual holding City elective office, the contractor wins his or her approval on a contract. In these circumstances, the anti-corruption interests served by section 1.126 apply with equal force to a donation to a City elective officer running for *any* elective office, either state or local.

In your letter, you rely on Regulation 1.126-2 to argue that the City’s contractor contribution ban does not apply to individuals holding City elective office seeking election to State office. But, as you note, this regulation only interprets section 1.126(b)(1)(C) – not subsection (b)(1)(A). Nonetheless, Regulation 1.126-2 confuses the proper understanding of section 1.126(b)(1)(A) and unnecessarily suggests that the City’s contractor contribution ban should be limited to City elective officers seeking local elective office. To clarify this issue, staff will recommend that the Commission approve a regulation to make clear that the contractor ban in section 1.126 applies to any candidate campaign committee controlled by a City elective officer who must approve the contract, whether it be for City, State or Federal elective office.

## II. The Proposed Changes to the Regulations

New language is set forth in underlined italic text; deletions are set forth in strikethrough text.

### **Regulation 1.126-1: Contribution Limits – Contractors Doing Business with the City: Definitions.**

(a) Board on which an individual sits.

“Board on which an individual sits” means the board to which the officer was elected and any other board on which the elected officer serves.

(b) Commencement of Negotiations.

Negotiations commence when a prospective contractor first communicates about the possibility of obtaining a specific contract with an officer or employee of the City, the San Francisco Unified School District, the San Francisco Community College District, or a state agency on whose board an appointee of a city elective officer sits ~~about the possibility of obtaining a specific contract.~~ Either the prospective contractor or the officer or employee may initiate the communication, and this This initial communication may occur in person, by telephone, or in writing, and may be initiated by the prospective contractor or the officer or employee.

Examples of communications between prospective contractors and officers and employees of the City, the Unified School District, the Community College District or a state agency on whose board an appointee of a city elective officer sits that commence negotiations include, but are not limited to, the following: A prospective contractor contacts an officer or employee to promote himself or herself for a specific contract; an officer or employee contacts a prospective contractor to propose that the contractor apply for a specific contract; a prospective contractor submits a bid, proposal or response to a Request for Proposals or Request for Qualifications to compete or be eligible for a specific contract.

Examples of communications between prospective contractors and officers and employees that do not commence negotiations include, but are not limited to, the following: Inquiries regarding a particular contract, and requests for information or documents relating to a Request for Proposal or Request for Qualifications, provided that the inquiry or request does not involve promotion of the prospective contractor's interest in a specific contract; distribution or receipt of Requests for Proposals or; ~~distribution or receipt of Requests for Qualifications; attendance at an interested persons meeting or a hearing that is open to the public~~ where the prospective contractor does not promote himself or herself for a specific contract; and requests to be placed on a mailing list regarding contracting opportunities.

(c) Contract.

For the purposes of section 1.126, a contract does not include the following:

- (1) a work order or purchase order submitted under an existing contract; or
- (2) a modification of an existing contract where the majority of the terms of the contract remain in full force and effect and the total amount of the modification does not exceed \$50,000 in a fiscal year.

(d) Date the Contract Is Approved.

A contract is approved when it is finalized and signed by the City, a state agency on whose board an appointee of a City elective officer sits, the San Francisco Unified School District or the San Francisco Community College District and the contractor.

(e) Person who Contracts With.

- (1) For the purposes of section 1.126, a "person who contracts with" includes any named party or prospective named party to a contract, as well as any member of that named party or prospective named party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 20

percent in the named or prospective named party, any subcontractor listed in a bid or contract, and any committee as defined in Chapter 1 of the Campaign and Governmental Conduct Code that is sponsored or controlled by the named party or prospective named party.

(2) If a named party or prospective named party does not have a board of directors or chairperson of the board of directors, a “person who contracts with” includes any person who directs or participates in directing the affairs and activities of the named party or prospective named party.

(3) If a named party or prospective named party does not have a chief executive officer, chief financial officer, or chief operating officer, a “person who contracts with” includes any president of the named party or prospective named party or any person who directs the overall activities, financial activities, or operations of the named party or prospective named party.

(f) Personal services.

For the purposes of section 1.126(a)(2)(A), personal services means services that are provided by a person or an entity. Such services include but are not limited to tasks such as consulting, architecture, engineering, design, legal services, finance, accounting, janitorial services, medical treatment, transportation, underwriting, insurance, and security.

(g) State Agency on whose Board an Appointee of a City Elective Officer Serves.

For the purposes of section 1.126, a state agency on whose board a City elective officer or an appointee of a City elective officer serves is limited to the following: Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, ~~Redevelopment Agency Commission~~, Relocation Appeals Board, ~~Treasure Island Development Authority~~, and Local Workforce Investment Board. The City elective officers who appoint members of these boards for the purposes of section 1.126 are:

- (1) Health Authority: Board of Supervisors and Mayor
- (2) Housing Authority Commission: Mayor
- (3) Industrial Development Authority Board: Mayor and Board of Supervisors
- (4) Parking Authority: Mayor and Board of Supervisors
- ~~(5) Redevelopment Agency Commission: Mayor and Board of Supervisors~~
- ~~(6) Relocation Appeals Board: Mayor and Board of Supervisors~~
- ~~(7) Treasure Island Development Authority: Mayor~~
- ~~(8) Local Workforce Investment Board: Mayor~~

(h) Submission of a Contract to an Individual Holding City Elective Office.

(1) A contract is submitted to each member of the Board of Supervisors when a resolution to approve the contract is introduced at the Board of Supervisors.

(2) A contract approved by the Board of Supervisors is submitted to the Mayor upon adoption of a resolution approving the contract by the Board of Supervisors.

(3) A contract is submitted to any other individual holding City elective office when the individual is informed that negotiations for the contract have commenced or the individual's office receives a copy of the contract for the individual's review or approval.

(i) Termination of Negotiations.

Negotiations terminate when an officer or employee of the City, the San Francisco Unified School District, the San Francisco Community College District, or a state agency on whose board an appointee of a City elective officer sits, the Unified School District or the Community College District and/or the prospective contractor ends the negotiation process before a final decision is made to award a contract. Negotiations may also terminate when the prospective contractor ends the negotiation process with such officers or employees.

Examples of actions that terminate negotiations include, but are not limited to, the following: A prospective contractor formally withdraws or is disqualified from consideration for a specific contract.

#### **Regulation 1.126-2: Party that is Subject to the Prohibition.**

(a) The prohibition set forth in section 1.126(b) applies to the named party or prospective named party who contracts with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District. This includes:

- (1) any named party or prospective named party to the contract;
- (2) any member of that named party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer,
- (3) any person with an ownership interest of more than 20 percent in the named party;
- (4) any subcontractor listed in a bid or contract; and
- (5) any committee as defined in the California Government Code (commencing at section 81000) that is sponsored or controlled by the named party or prospective named party.

(b) The prohibition set forth in section 1.126(b) does not apply to any member of the board of directors, chairperson, chief executive officer, chief financial officer or chief operating officer of any person with an ownership interest of more than 20 percent in the named party or prospective named party to a contract, or of any subcontractor listed in a bid or contract.

(c) For the purposes of section 1.126(b)(1)(A), an "individual holding City elective office" includes any committee controlled by that individual formed to support that individual's candidacy to a local or state elective office.

(ed) For the purposes of section 1.126(b)(1)(C), "a committee controlled by such individual or candidate" includes ~~either a~~ any committee controlled by such individual or candidate formed either to support or oppose a candidate for City/local or state elective office or ~~a committee formed to support or oppose a local or state~~ ballot measure.

### III. Discussion of the Proposed Changes

#### Proposed changes to Regulation 1.126-1(b), (d), and (i)

The proposed changes to two of these subsections are linguistic, in order to provide for greater clarity about when negotiations for a contract commence (§1.126-1(b)) or terminate (§1.126-1(i)). Proposed changes to Regulation 1.126-1(b) and (d) add the words "San Francisco" to identify the Unified School District and Community College District at issue.



#### Proposed changes to Regulation 1.126-1(g)

Regulation 1.126(g) identifies the state agencies on whose board a City elective officer or appointee of a City elective officer serves. When the regulation was adopted, there were eight such state agencies, including the Redevelopment Agency and the Treasure Island Development Authority (TIDA). As a result of state legislation and a subsequent decision by the California Supreme Court, effective February 1, 2012, redevelopment agencies have been eliminated in California, and the Redevelopment Agency and TIDA have ceased to exist as state agencies. The Redevelopment Agency no longer exists, and TIDA is now a City agency. Because the Redevelopment Agency and TIDA are no longer state agencies, staff recommends that they be deleted from Regulation 1.126-1(g).

#### Proposed changes to Regulation 1.126-2(c)

Proposed Regulation 1.126-2(c) adds new language to clarify that the term “an individual holding City elective office” in CFRO section 1.126(b)(1)(A) includes any committee controlled by that individual formed to support that individual’s election to a local *or state* elective office. This change clarifies that no contractor may make a contribution to an individual who holds a City elective office or to *any* of that individual’s candidate committees, whether formed for City elective office or state elective office, if that individual must approve the contract.

#### Proposed changes to Regulation 1.126-2(d)

The proposed changes to Regulation 1.126-2(d) clarify the term “a committee controlled by such individual or candidate” in CFRO section 1.126(b)(1)(C). It means that no contractor may make a contribution to (1) a City elective officer who must approve the contract, (2) a candidate for such City elective office that must approve the contract, (3) any committee controlled by the officer or candidate that is formed to support or oppose a candidate for local or State elective office, or (4) any committee controlled by the officer or candidate that is formed to support or oppose a local or State ballot measure.

#### **Decision Point**

Shall the Commission approve the proposed changes to Ethics Regulations 1.126-1 and 1.126-2, as discussed and set forth above?

IV. Text of San Francisco Campaign and Governmental Conduct Code section 1.126

**SEC. 1.126. CONTRIBUTION LIMITS--CONTRACTORS DOING BUSINESS WITH THE CITY, THE UNIFIED SCHOOL DISTRICT AND THE COMMUNITY COLLEGE DISTRICT.**

**(a) DEFINITIONS.**

For purposes of this section, the following words and phrases shall mean:

(1) "Person who contracts with" includes any party or prospective party to a contract, as well any member of that party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 20 percent in the party, any subcontractor listed in a bid or contract, and any committee, as defined by this Chapter that is sponsored or controlled by the party, provided that the provisions of Section 1.114 of this Chapter governing aggregation of affiliated entity contributions shall apply only to the party or prospective party to the contract.

(2) "Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:

- (A) the rendition of personal services,
- (B) the furnishing of any material, supplies or equipment,
- (C) the sale or lease of any land or building, or
- (D) a grant, loan or loan guarantee.

(3) "Board on which an individual serves" means the board to which the officer was elected and any other board on which the elected officer serves.

(b) Prohibition on contribution. No person who contracts with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District,

(1) Shall make any contribution to:

(A) An individual holding a City elective office if the contract must be approved by such individual, the board on which that individual serves or a state agency on whose board on which an appointee of that individual serves;

(B) A candidate for the office held by such individual; or

(C) A committee controlled by such individual or candidate

(2) Whenever the agreement or contract has a total anticipated or actual value of \$50,000.00 or more, or a combination or series of such agreements or contracts approved by that same individual or board have a value of \$50,000.00 or more in a fiscal year of the City and County

(3) At any time from the commencement of negotiations for such contract until.

(A) The termination of negotiations for such contract; or

(B) Six months have elapsed from the date the contract is approved.

(c) Prohibition on receipt of contribution. No individual holding City elective office or committee controlled by such an individual shall solicit or accept any contribution prohibited by subsection (b) at any time from the formal submission of the contract to the individual until the termination of negotiations for the contract or six months have elapsed from the date the contract is approved. For the purpose of this subsection, a contract is formally submitted to the Board of Supervisors at the time of the introduction of a resolution to approve the contract.

(d) Forfeiture of contribution. In addition to any other penalty, each committee that receives a contribution prohibited by subsection (c) shall pay promptly the amount received or deposited to the City and County of San Francisco and deliver the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Commission may provide for the waiver or reduction of the forfeiture.

(e) Notification.

(1) Prospective Parties to Contracts. Any prospective party to a contract with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District shall inform each person described in subsection (a)(1) of the prohibition in subsection (b) by the commencement of negotiations for such contract.

(2) Individuals Who Hold City Elective Office. Every individual who holds a City elective office shall, within five business days of the approval of a contract by the officer, a board on which the officer sits or a board of a state agency on which an appointee of the officer sits, notify the Ethics Commission, on a form adopted by the Commission, of each contract approved by the individual, the board on which the individual serves or the board of a state agency on which an appointee of the officer sits. An individual who holds a City elective office need not file the form required by this subsection if the clerk or secretary of a board on which the individual serves or a board of a state agency on which an appointee of the officer serves has filed the form on behalf of the board.

(Added by Ord. 71-00, File No. 000358, App. 4/28/2000; amended by Proposition Q, 11/7/2000; Ord. 141-03, File No. 030034, App. 6/27/2003; Ord. 228-06, File No. 060501, App. 9/14/2006; amended by Proposition H, June 3, 2008) (Derivation: Former Administrative Code Section 16.510-2; added by Proposition N, 11/7/95)

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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

## EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of July 23, 2012

BENEDICT Y. HUR  
CHAIRPERSON

AMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

### 1. November 6, 2012 election.

The odd-numbered districts for the Board of Supervisors and four seats each for the Board of Education and Community College District will be voted on in the November 6, 2012 election.

Recently, the Board of Supervisors approved changes to the public financing program, including changes to the qualification threshold. Under revised rules, a candidate for the Board of Supervisors must demonstrate that he/she has received at least \$10,000 in qualifying contributions from at least 100 individuals who reside in the City (incumbent candidates must raise \$15,000 in qualifying contributions from at least 150 residents). Upon certification, eligible candidates receive a grant of \$20,000. Thereafter, eligible candidates may receive additional public funds based on private contributions raised. Candidates may receive up to \$155,000 in public funds (incumbent candidates may receive up to \$152,500). The last day for candidates to submit an application to qualify for public funds is Tuesday, August 28.

As of July 17, one candidate for the Board of Supervisors has submitted an application for public funding and has been certified as eligible to receive public funds.

### 2. Investigation and enforcement program.

As of July 11, 2012, there are 23 pending complaints alleging violations within the Ethics Commission's jurisdiction. Out of the nine complaints alleging Sunshine Ordinance violations, the resolution of seven is pending the approval of the Commission's Sunshine Ordinance regulations.

Category	# of Complaints
Campaign Finance	6
Conflict of Interest	4
Governmental Ethics	1
Lobbyist Ordinance	1
Campaign Consultant Ordinance	2
Sunshine Ordinance	9
<b>TOTAL</b>	<b>23</b>

### 3. Campaign finance disclosure program.

a. Filing deadline. The next filing deadline that applies to all committees falls on July 31, 2012 for the First Semi-Annual statement, which covers the reporting period ending June 30, 2012. In the interim, staff continues to receive and process campaign statements for other filing deadlines. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations.

b. Collection of late filing fees and contribution forfeitures. In the FY 11-12, as of June 30, the Commission collected a total of \$38,379 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$42,170, of which waiver requests are pending for \$6,158; and \$24,559 is pending at the Bureau of Delinquent Revenues.

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on pending accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in <b>bold</b> )
1	Johnnie Carter for Community College Board	1226264	Johnnie Carter	6/16/06	\$9,520	\$6,595	\$6,595
2	Committee to Elect M. Valle for Treasurer	1278937	Manuel B. Valle	6/14/07	\$5,525	\$5,525	\$5,525
3	Omar Khalif for Board of Educ.	1287030	Omar Khalif	7/30/09	\$1,800	\$1,775	\$1,775
4	Myrna Lim for District 11 Sup	1306882	Myrna Lim	7/30/09	\$1,180	\$1,180	\$1,180
5	Myrna Lim for District 11 Sup	1256697	Jia Jun Chen	8/20/07	\$3,855	\$2,775	\$2,775
6	San Francisco Women's Political Committee	1243711	Giselle Barry	5/16/06	\$1,906	\$50	\$50
7	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
8	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	2,658.90	\$2,658.90	2,658.90
						<b>TOTAL</b>	<b>\$24,559</b>

#### 4. Revenues report.

For FY 11-12, the Commission was budgeted to generate \$100,000 in revenues. As of June 29, 2012, the Commission received \$ 128,820 as summarized below. The figure represents collection of approximately 128 percent of expected revenues for FY 11-12.

Revenues received as of June 29, 2012:

Source	Budgeted Amount FY 11-12	Receipts
Lobbyist Fees	\$27,000	\$47,500
Other Ethics General	\$1,000	\$316
Campaign Finance Fines	\$50,000	\$38,379
Campaign Consultant Fees	\$18,000	\$24,950
Lobbyist Fines	\$1,000	\$350
Statements of Economic Interests Fines	\$1,000	\$650
Other Ethics Fines	\$1,000	\$9002
Campaign Consultant Fines	\$1,000	\$4,100
Unallocated	\$0	\$3,573
Total	\$100,000	\$128,820

##### **5. Status of legislative proposals endorsed by Ethics Commission.**

On November 22, 2011, Supervisor Scott Wiener introduced proposed amendments to the CFRO that were approved by the Commission at its October and November 2012 meetings. The legislation, File No. 111275, was assigned to the Rules Committee. If approved by a supermajority of the Board of Supervisors, the amendments would have 1) modified and streamlined disclaimer and reporting requirements for candidates and third parties raising and spending funds in local elections; 2) required the Ethics Commission to provide public notice when thresholds are met; 3) eliminated the overall contribution limit on contributions to all candidates on the ballot in a single election; and 4) made various reporting and disclaimer requirements parallel to requirements in State law. At a Rules Committee hearing on June 7, 2012, supervisors indicated that they were no longer interested in a compliance costs exception to the individual expenditure ceilings, given that legislation to amend the public financing program has been enacted. Committee members also indicated, among other things, that the Commission should engage in another public process about proposals to amend the CFRO and that the Commission should not consider decreasing the frequency of disclosure. Staff anticipates that it will bring forth proposals to address these concerns later in the year.

At its special meeting on March 9, 2012, the Ethics Commission approved amendments to File No. 111082, legislation to amend the Campaign Finance Reform Ordinance to establish new qualification requirements for candidates seeking public funds, set the amount of public funds that may be disbursed, delay the disbursement date of public funds, change the matching funds formula, continue with adjustable individual expenditure ceilings that start at \$250,000 for a candidate for the Board of Supervisors and \$1,475,000 for a candidate for Mayor, and cap the Election Campaign Fund at \$7 million. The legislation was referred back to the Board of Supervisors, where it passed in April; the legislation took effect on May 20, 2012.

##### **6. Lobbyist program.**

As of July 11, 2012, 85 individual lobbyists were registered with the Commission. For FY 11-12, total revenues collected were \$47,850, including \$47,500 in lobbyist registration fees and



\$350 in late fines. For FY 12–13, as of July 11, 2012, zero revenue has been collected. The filing deadline for the next lobbyist disclosure statement is July 15, 2012.

#### **7. Campaign Consultant program.**

As of July 16, 2012, thirty-five campaign consultants are registered with the Commission. \$24,950 in registration fees and \$4,100 in late fines were collected during the 2011-2012 fiscal year. \$100 in registration fees have been collected so far during the 2012-2013 fiscal year. The next campaign consultant quarterly report deadline is Monday, September 17, 2012. Staff will send reminder notices to all active campaign consultants two weeks before the deadline.

#### **8. Outreach and Education.**

On April 24 and June 26, staff conducted a Candidates' Training which covered filing requirements for potential candidates for the City elective offices of the Board of Supervisors, Board of Education, and Community College Board. This training focused on campaign finance requirements that apply to candidates for all City elective offices and provided an overview of the Board of Supervisors' public financing program.

On June 19, 2012, staff met with a delegation of 23 representatives from various justice ministries in China. The group visited the United States and generally met with various prison officials to learn about the U.S. prison system, government integrity and public administrative efficiency.

On June 29, 2012, staff met with a delegation of 18 persons from the Shandong Provincial Commission Office for Public Sector Reform. The group, whose first stop was San Francisco, was interested in learning about public sector reform and personnel administration in the U.S. Sponsored by Triway International Group, a professional consulting firm that provides training and visiting programs for Chinese delegations to the states, staff discussed the formation, functions and responsibilities of the Ethics Commission and strategies to maintain and raise ethical qualifications of officials in government.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments.

The following trainings are upcoming trainings scheduled for 2012:

Candidates' Training: August 16

The following are web video trainings available on the Commission website:

Department of Building Inspection SIA Training  
Candidates' Training  
Controller's Office SIA Training  
Department on the Environment SIA Training  
Governmental Ethics Ordinance Training for City Employees  
Lobbyist Ordinance Training  
Medical Examiner's Office SIA Training



Non-Candidate Recipient Committee Training  
Public Utilities Commission SIA Training  
SIA Template Language Training


## **9. San Francisco Data Web Site**

Staff worked with the Department of Technology to publish the Commission's lobbyist and campaign finance data to the City's new data web site at [data.sfgov.org](http://data.sfgov.org). The data web site is a one-stop location to obtain datasets from a variety of City departments that are in a common format. The federal government, and many states and cities have also started using the same data system so that datasets can be interoperable. Lobbyist and campaign finance data can be sorted, filtered, graphed, or plotted on maps using the online tools and republished on other web sites. The site also allows programmers to access the data for software applications and web sites. When the lobbyist or campaign finance data is updated, graphs and charts published on other web sites will automatically update with the latest information.

## **10. Interns.**

This past fiscal year we have been fortunate to have had the services of the following interns, some of whom are continuing on with their services to the Commission: Alex Gudim, a student at University of San Francisco (USF); Johnny Hosey, a graduate of San Francisco State University (SFSU); Sade Jones, an intern with the SF Youth Works Program; Colby Payne, a graduate of USF; Perry Wong, a student at New York University; Samantha Sabo, a graduate of USF; Sahand Shahrabani, a student at USF; Abdullah Taleb, a student at SFSU; and Alana Taloa, a student at John C. Kimball High School.

Respectfully submitted,

  
\_\_\_\_\_  
John St. Croix  
Executive Director

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[DRAFT]

Minutes of the Regular Meeting of  
The San Francisco Ethics Commission  
July 23, 2012  
Room 400, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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**I. Call to order and roll call.**

Chairperson Hur called the meeting to order at 5:35 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamiene Studley, Vice-Chairperson; Beverly Hayon, Commissioner; and Paul A. Renne, Commissioner. Commissioner Liu was excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Steven Massey, Information Technology Officer.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Deputy City Attorney (DCA).

OTHERS PRESENT: Ray Hartz; Larry Bush; Michael Petrelis; Oliver Luby; Charles Marsteller; Richard Hansen; and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Staff Memorandum re: Proposed Amendments to the Campaign Finance Reform Ordinance Section 1.112, dated July 18, 2012.
- Draft Ordinance amending the San Francisco Campaign and Governmental Conduct Code by amending section 1.112 to require the electronic filing of campaign statements submitted to the Ethics Commission.
- Assembly Bill No. 2452, approved by Governor July 13, 2012.
- Staff memorandum re: Amendments to regulations regarding CFRO section 1.126.
- Draft Minutes of the Regular Meeting of the San Francisco Ethics Commission on March 26, 2012.
- Draft Minutes of the Special Meeting of the San Francisco Ethics Commission with the Compliance & Amendments Committee of the Sunshine Ordinance Task Force on April 13, 2012.
- Draft Minutes of the Special Meeting of the San Francisco Ethics Commission on April 23, 2012.
- Draft Minutes of the Special Meeting of the San Francisco Ethics Commission on May 29, 2012.
- Draft Minutes of the Special Meeting of the San Francisco Ethics Commission on June 19, 2012.
- Draft Minutes of the Special Meeting of the San Francisco Ethics Commission on June 28, 2012.

- Draft Minutes of the Special Meeting of the San Francisco Ethics Commission on June 29, 2012.
- Executive Director's Report to the Ethics Commission for the Meeting of July 23, 2012.

**II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

A member of the public spoke regarding Jewelle Gomez and played an audio recording of Ms. Gomez. He also displayed slides of SFPL Friends and Foundation and quoted Executive Director St. Croix.

Ray Hartz made comments regarding placing the 150-word written statements provided by speakers in the minutes. He stated that he has four Orders of Determination from the Sunshine Ordinance Task Force regarding this issue. He mentioned case #1088 where the Task Force found the Ethics Commission in violation and stated that the Task Force found the City Attorney's Office in violation as well. He stated that the Commission has not enforced the Task Force's findings of official misconduct. [Mr. Hartz supplied a written summary of his comments, which is included at the end of these minutes.]

Allen Grossman commented that five Task Force cases which were dismissed between August 2011 and April 2012. He stated that six cases were dismissed improperly and the Commission had jurisdiction to hear the cases.

Larry Bush spoke about Supervisor Weiner's amendments before the Rules Committee of the Board. He mentioned a report from Harvey Rose, Budget and Legislative Analyst of the Board, which had a comparison between the Commission and its counterpart in Los Angeles. He provided copies of the report for the Commissioners.

Michael Petrelis commented on public record requests about AIDS medications. He stated that open government and enforcement of those laws is a life and death matter in certain cases. He stated that the Task Force has been undermined by Supervisor Weiner, as he removed qualified people from the Task Force. He stated that people appointed to the Task Force are not qualified. He asked the Commission to serve as a watchdog. [Mr. Petrelis supplied a written summary of his comments, which is included at the end of these minutes.]

Oliver Luby stated that an amendment package was rejected at the Rules Committee and it was not mentioned in the Executive Director's Report. He stated that the amendment package conflicted with state law and had drafting errors. He also mentioned the Budget and Legislative Analyst's report on the comparison of the Ethics Commission and Los Angeles Ethics Commission.

Charley Marsteller stated that he attended the June 2012 Rules Committee meeting. He suggested that the Commission get an opinion from the City Attorney regarding what CFRO requires the Commission to do when amending voter-passed initiatives. He also stated that the amendments must further the purposes of the Act.

**III. Consideration of amendments to the Campaign Finance Reform Ordinance (CFRO), San Francisco Campaign and Governmental Conduct Code section 1.100 et seq., to require that all campaign statements submitted to the Ethics Commission be filed electronically.**

Information Technology Officer Steven Massey presented staff's memorandum regarding the proposed amendments. Mr. Massey stated that staff currently handles two paper copies and one electronic copy of each filing. He stated that staff's proposal would consolidate the requirements as the new state law (AB 2452) would allow local agencies to eliminate paper filings as of January 1, 2013. Executive Director St. Croix stated that the elimination of paper filings would save money and make things easier for the regulated community. He thanked Mr. Massey for his work on this issue.

Chairperson Hur thanked Mr. Massey and staff. Vice-Chairperson Studley stated that the proposal would have advantages for the public, as it would permit integrated information. She believed that the proposed amendments would further the purposes of the law. She asked about proposed 1.112(c), voluntary electronic filing. Chairperson Hur asked about Decision Point 1, which sets forth proposed findings. DCA Givner stated that the findings language was not going to be codified and would not appear in CFRO. Chairperson Hur suggested an amendment to number 5, starting on line 17 of page 2 of the proposed amendments, to add "and the Ethics Commission." Vice-Chairperson Studley suggested an amendment to findings 4 to flip the sentences:

Public Comment:

A member of the public stated that she had a question about the amendments. She stated that she was a member of a small club that generates a slate card every year. She stated that the computer program has too many bugs. She commented on her entries on Schedule D during the last election. She requested completing Schedule D on a paper filing.

Oliver Luby stated that the system is not designed for Schedule D and it is not user friendly. He stated that it is difficult for small PACs. He stated that the move away from paper filings for these filings is in direct contrast with the executive staff's position to maintain paper-only filings for contract disclosures. He stated that these forms must be filed in paper and then scanned in order to be posted online by staff. He suggested that the Commission add a provision to section 1.126 to implement e-filing for these forms. He also stated that the new law (AB 2452) would also apply to Form 700s (Statement of Economic Interests).

Ray Hartz asked when the public would have access to these documents. He stated that the law does not mention how quickly staff must post the information. He stated that the Ordinance should require that the documents be available immediately upon receipt. He stated that staff is always complaining about their workload. [Mr. Hartz supplied a written summary of his comments, which is included at the end of these minutes.]

Larry Bush stated that there should be a timeline for when these documents are available on the Commission's website. He stated that the Form 700s are not posted quickly enough. He stated that the forms should be posted within ten days.

Charles Marsteller stated that there were many interesting things in the Harvey Rose (Budget and Legislative Analyst) report. He suggested that the Commission send a small group to Los Angeles to look at their processes and procedures.

Chairperson Hur asked whether electronic filings are available to the public immediately. Mr. Massey stated that the filings are available to the public within a few seconds. He stated that staff does not intervene, as it is an automated process. Commissioner Hayon asked about e-filing for Form 700s. Mr. St. Croix stated that electronic filing for Form 700s is available, but not mandatory.

Chairperson Hur also asked about Schedule D. Mr. Massey stated that staff is working on formatting issues and is anticipating a change for early 2013.

**Motion 12-07-23-1 (Hayon/Studley): Moved, seconded, and passed (4-0; Liu excused) that the Ethics Commission adopt decision points 1-5, with the two amendments proposed to decision point 1.**

#### **IV. Consideration of amendments to regulations for section 1.126 of the CFRO.**

Deputy Executive Director Ng presented the amendments to section 1.126. She stated that many changes were technical and linguistic in nature. She stated that amendments would clarify that section 1.126 applies to an individual who holds City elective office and any committee controlled by that City elected officer. Chairperson Hur stated that the amendments appear to be consistent with CFRO and would clarify the purpose of section 1.126. He stated that it is consistent with the intention of the voters.

##### Public Comment:

Ray Hartz stated that the Commission always amending CFRO. He stated that members of the public have followed campaign issues. He stated that the Commission and the public only get one side of the story. He stated that staff did not mention changes suggested by the Budget and Legislative Analyst's report. He stated that the public should get a complete and balanced picture. [Mr. Hartz submitted a written summary of his comments, which is included at the end of these minutes.]

**Motion 12-07-23-2 (Renne/Hayon): Moved, seconded, and passed (4-1; Liu excused) that the Ethics Commission adopt the changes to CFRO identified in Agenda Item 4.**

Deputy Director Ng asked to return to item number 3 and asked the Commission to consider Decision Point 6 that was not mentioned in the earlier motion.

**Motion 12-07-23-3 (Studley/Renne): Moved, seconded, and passed (4-0; Liu excused) that the Ethics Commission adopt decision point 6, from Agenda Item 3.**

##### Public Comment:

None.

## V. Closed session.

### Public Comment:

Ray Hartz stated that the item should be continued to another meeting, as it was not properly agendized. He stated that public business should be conducted in full view of the public. He stated that the Commission should give the public enough information in order to allow the public to determine whether it is proper for the Commission to conduct this business in closed session. He stated that the Police Commission provides case numbers or names to the public when it goes into closed session. He states that many commissions and boards provide little to no information about items discussed in closed sessions. He stated that he does not believe that, in closed session, commissions or board members never talk about anything that is disclosable. [Mr. Hartz submitted a written summary of his comments, which is included at the end of these minutes.]

Richard Hansen stated that he agreed with Mr. Hartz's statements.

**Motion 12-07-23-4 (Hayon/Studley): Moved, seconded, and passed (4-0; Liu excused) that the Ethics Commission move into closed session.**

Vice-Chairperson Studley asked whether any information could be added. DCA Givner stated that the agenda references Charter section C-3.699-13, which requires Ethics Commission proceedings regarding enforcement matters to be confidential up to a certain point. He stated that the Charter requires these discussions to be confidential.

The Ethics Commission entered into closed session at 6:34 PM.

Chairperson Hur, Vice-Chairperson Studley, Commissioners Hayon and Renne, Executive Director St. Croix, and Deputy Executive Director Ng were in attendance during the closed session.

The Ethics Commission returned to open session at 6:51 PM.

## VI. Discussion and vote regarding closed session action and deliberations.

**Motion 12-07-23-5 (Studley/Renne): Moved, seconded, and passed (4-0; Liu excused) that it is in the best interests of the public not to disclose its closed session deliberations re: anticipated litigation.**

### Public Comment:

Ray Hartz stated that the Commission never disclosed what is discussed during closed session. He asked whether the Commission discussed something it should not have during closed session. He stated that other boards and commissions also do not disclose discussions which occur during closed session. [Mr. Hartz submitted a written summary of his comments, which is included at the end of these minutes.]



Chairperson Hur stated that the Commission was in closed session for ten minutes and the Charter requires the Commission not to disclose their deliberations.

**VII. Minutes of the Commission's regular meeting of March 26, 2012 and special meetings of April 13, 2012, April 23, 2012, May 29, 2012, June 19, 2012, June 28, 2012, and June 29, 2012.**

Chairperson Hur questioned whether the Commission should adopt the draft minutes relating to meetings that are still in process. Commissioner Renne stated that the Commission should only approve the March 26 and April 13 minutes and wait to approve any minutes related to the Mirkarimi matter. He stated that it would be premature to approve those minutes, as there have been some interim rulings. Vice-Chairperson Studley stated that the information from those meetings should be shared with the public and is already available to the public. Chairperson Hur stated that the attorneys for the parties should review the minutes regarding the Mirkarimi matter. Mr. St. Croix added that the draft minutes are available to the public.

**Motion 12-07-23-6 (Hayon/Studley): Moved, seconded, and passed (4-0; Liu excused) that the Ethics Commission approve the minutes of the Ethics Commission's regular meeting of March 26, 2012 and special meeting of April 13, 2012.**

Public Comment:

Ray Hartz stated that the 150-word written summaries submitted by members of the public are important. He stated that the minutes are not always accurate when summarizing public comment and used the summary of his comments in the March 26, 2012 draft minutes as an example. He claimed it is censorship. He said the main purpose of the Brown Act was to protect dissenting opinion. He stated that the summary of his comments in the March 2012 draft minutes was meaningless. [Mr. Hartz submitted a written statement that exceeded the 150-word limit in section 67.16 of the Sunshine Ordinance.]

**VIII. Executive Director's Report.**

Mr. St. Croix stated that staff expected the usual number of applicants for the public financing program.

Public Comment:

Ray Hartz commented on Item 2 of the report, the investigation and enforcement program, particularly the Sunshine Ordinance cases. He stated that Mr. St. Croix was "off his game" because by now each of the nine pending Sunshine Ordinance complaints should have been dismissed without a hearing before the Commission. He stated that the Commission has only had one hearing regarding a Task Force referral. He stated that the Ethics Commission has sided with the City and against the public every time in open government matters. He stated that this has been dragging on for years. He stated that it looks bad for the Commission. [Mr. Hartz submitted a written summary of his comments, which is included at the end of these minutes.]

**IX. Items for future meetings.**

Commissioner Renne asked the Commission to address the Gomez matter again. Commissioner Studley stated that she would like the Commission to ask the Mayor how he has handled the letter from the Commission. DCA Givner stated that the Commission could not authorize the Chair to send a letter during this meeting, as it was not on the agenda. Chairperson Hur stated that he had no objection to placing this item on the agenda for a future meeting to request follow-up from the Mayor.

Commissioner Studley also stated her interest in the report, dated June 5, 2012, generated by the Budget and Legislative Analyst. She stated that she would like to discuss the report. She stated that she would like to hear from the Executive Director on how he and staff coordinate with other agencies about rules and procedures. Commissioner Hayon expressed interest in hearing from Harvey Rose directly about his report.

Commissioner Studley also stated that the draft minutes misspelled “sheriff” repeatedly.

Public Comment:

Ray Hartz thanked both of the Commissioners for requesting future discussion of the Jewelle Gomez matter. He stated that it is better for the Mayor to respond to the Commission about his position on the matter. He stated that he comes to meetings to ensure that members of the public are free to make meaningful public comment and that they are given access to public documents.

**X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

Ray Hartz stated that when he joined the Navy, he took an oath to support and defend the Constitution. He stated that when he sees members of the public are not given the opportunity to speak or are disparaged during public comment, he finds it unacceptable. He stated that many commission or board members are violating the oath to support and defend the Constitution of the United States and that of the State of California. He stated that it is critical that people participate in government. He stated that people are free to express themselves.

**XI. Adjournment.**

**Motion 12-07-23-7 (Renne/Hayon): Moved, seconded, and passed (4-0; Liu excused) that the Ethics Commission adjourn.**

The meeting was adjourned at 7:31 PM.

*This written summary was provided by the speaker, Ray Hartz, during public comment for agenda item II. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

**“Know Your Rights Under the Sunshine Ordinance” is printed on every agenda for City boards and Commissions. One of those rights is to submit a 150-word summary which is supposed to be included “in the minutes.” I have 4 Orders of Determination: #10054, #11054, #11088 (finding this Ethics Commission in violation), and #11071 (finding the City**

Attorney in violation). So, with all of these cases, with all of these referrals, with all of the time passed, what do I have? The Ethics Commission continues it's almost uninterrupted failure to enforce, IN ANY WAY, findings of "official misconduct." This Commission heard one case: against Jewelle Gomez and sent a recommendation to Mayor Ed Lee that she be removed. The Mayor has taken no action on this referral! I guess the Mayor will only follow whatever your recommendation in the case against Sheriff Mirakarimi if it suits his "political purposes."

*This written summary was provided by the speaker, Michael Petrelis, during public comment for agenda item II. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

As a taxpayer subsidizing the Ethics Commission, I want it to enforce all Sunshine Ordinance Task Force findings of "official misconduct" whenever they occur. Your track record as enforcers of such findings is abysmal and must be addressed. Why are you unwilling to be the enforcers so desperately needed? Failure to enforce SOTF "official misconduct" findings greatly diminish good government practices. Who pulls your strings and keeps you from providing enforcement?

With SOTF effectively shut down because of Supervisor Wiener's shameful backroom machinations to remove extremely qualified members who fail his litmus tests, and install the self-admitted unqualified Todd David as a member, your commission providing oversight is more crucial than ever. Wiener's evisceration of SOTF is unacceptable.

Sunshine is the best disinfectant against corruption and guarantees open books and access to public records. I'm requesting that the Ethics Commission stop serving as a lapdog and develop watchdog principles.

*This written summary was provided by the speaker, Ray Hartz, during public comment for agenda item III. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

The real question I have for the Ethics Commission members on this agenda item is: If these documents are submitted "electronically," when and where will the public have access to these public records? Changing the requirement without showing any benefit to the "public" for complete and timely access is self-serving. The memorandum mentions "timely access," but places no requirement on EC staff to post those documents immediately upon receipt. With these "Proposed Amendments to the Campaign Finance Reform Ordinance Section 1.112," at each point where a requirement is placed for filing electronically there should also be a requirement that all such documents be made available to the public immediately upon receipt. The Ethics Commission staff is always complaining about their work load! Having these documents immediately available online to the public would ensure that nothing is missed by the staff hard pressed to carry out its duties and responsibilities.

*This written summary was provided by the speaker, Ray Hartz, during public comment for agenda item IV. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

Is there ever a meeting where you're not revising CFRO? Isn't this somewhat akin to rearranging deck chairs on the Titanic? You write a rule concerning "contributions" and participants in the political process find another "reading" of what you wrote to get around it. You write a rule saying City employees and/or officials can't award a contract and then leave City government and work for the same group and you give them an "exemption." As certain members of the public tend to follow particular campaign "issues," they are very likely to look at your agenda and notice all of the "missing" related documents. At most times it seems the EC staff provides you with the documents that will lead you to the determination they want, rather than documents that cover all sides of the issue under discussion. To paraphrase an old expression: the staff leads you by the nose!

*This written summary was provided by the speaker, Ray Hartz, during public comment for agenda item V. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

This closed session should be continued to a meeting where the item is properly agendized. This item is totally meaningless to any member of the public reading it. You're going to discuss "anticipated litigation as plaintiff." How can anyone comment on whether it's appropriate to go into closed session when they know absolutely nothing? Litigation about what, against who, for what purpose? Is there not a single, salient point that could give some understanding? Public business should be conducted in full view of the public! Members of the public should have enough information in the agenda item to enable them to address whether they believe that conducting this particular business beyond the view of the public is appropriate! EC staff, and by that I mean Mr. St. Croix, will argue that you've met the "letter of the law." I would argue that you have completely missed the spirit of the law!

*This written summary was provided by the speaker, Ray Hartz, during public comment for agenda item VI. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

Let me guess: You're now going to vote that nothing you discussed is subject to disclosure. I'm amazed that this EC seems to be composed of no one but superhumans! Whatever length of time, whatever the issues, you never, ever discuss anything that you should disclose? Most human beings find it difficult to stay "on track" that closely. Most human conversation tends to wander "off track" from time to time. You, however, maintain such close control that you never, ever move onto another topic! You never discuss ANYTHING that should be disclosed! WOW, I am impressed! Or, could it be that you discuss things and, having exhausted the topic, someone says: we probably shouldn't

be discussing this, as we would have to disclose the discussion. Oh, comes the response, you're right! We should return to the discussion we TOLD the public we were going to have. What a scam!

*This written summary was provided by the speaker, Ray Hartz, during public comment for agenda item VIII. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

Mr. St. Croix's reports are always "target rich" documents. That is: it seems that every item deserves a full three-minute public comment. I'll focus on #2 today, the "Investigation and enforcement program," particularly the "Sunshine Ordinance" category. Mr. St. Croix is really "off his game." By now each of those 9 complaints should have already been dismissed without a hearing before the Ethics Commission. The one and only hearing this body has given to a SOTF referral was at the time the Civil Grand Jury issued a report saying you had never conducted a hearing. I would have a really, really hard time justifying the fact that in all the hundreds of SOTF cases, and the few dozen that were referred to Ethics, just one was even considered by the commissioners. In open government matters you have sided with the City and against the citizens each and every time, but one!

Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF SPECIAL MEETING**

July 18, 2012 5:00 P.M. (Room 416),

July 19, 2012 5:00 P.M. (Room 416),

August 16, 2012 9:00 A.M. (Room 263)

**and AGENDA**

**Room 263 or 416 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

NOTICE: Please note that these are not the times or rooms of the Commission's regular meetings.

The Commission will continue its hearing on the Mirkarimi matter beginning on July 18 and will determine each day whether to continue this matter to another day pursuant to the schedule listed above. The Commission is expected to consider all matters relevant to this hearing, including stipulations, sworn declarations, direct testimony and questions and responses made on cross examination. The Commission may make procedural and substantive comments or rulings regarding such evidence.

Although public comment is not evidence and therefore cannot be considered by the Commission in making its determinations in this matter, there will be an opportunity for public comment after the evidentiary phase of the hearing is complete. Because this is a continuing meeting for the sole purpose of holding this hearing, the Commission will not take public comment each day of the continuing meeting.

The documents submitted for this proceeding are available on the Commission's website. They will also be made available for sharing at the Commission's meeting – the Commission regrets that it has insufficient resources to make hard copies available for all members of the public.

DEPOSITORY ITEM  
DOCUMENT

JUL 11 2012

SAN FRANCISCO



I. Call to order and roll call.

- II. The Ethics Commission will continue its hearing on charges of official misconduct pending against Sheriff Ross Mirkarimi. Under Charter Section 15.105, when the Mayor suspends an elective officer, “The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained.” Attorneys representing the Mayor and the Sheriff have filed papers with the Ethics Commission relating to identified issues, fact and expert witnesses, and other matters set forth at the Commission’s April 23, 2012, May 29, 2012, June 19, 2012, June 28, 2012 and June 29, 2012 meetings. Among other things, the Commission will continue to address the issues raised in the briefs and objections to evidence and witnesses; and consider sworn declarations, direct testimony and questions raised on and responses to cross-examination, as well as the parties’ agreed-upon factual stipulations. There will be an opportunity for public comment on this item after the evidentiary phase is complete, when the Commission will begin its deliberations to formulate its recommendations to the Board of Supervisors as required under the Charter. (Discussion and possible action.)

III. Adjournment.

*Know Your Rights Under the Sunshine Ordinance*

*Government’s duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people’s business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people’s review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Andrea Ausberry by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [sfoff@sfgov.org](mailto:sfoff@sfgov.org). Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Ausberry or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>*

*If any materials related to an item on this agenda have been distributed to the Ethics Commission after distribution of the agenda packet, those materials are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.*

*The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.*

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*This location is wheelchair accessible. In order to assist the City’s efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.*

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*Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site [www.sfetethics.org](http://www.sfetethics.org)*





# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

### PRESS RELEASE

BENEDICT Y. HUR  
CHAIRPERSON

AMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

**Contact:**  
**John St. Croix**  
**(415) 252-3100**

**For release:**  
**July 11, 2012**

### SUMMARY OF ACTIONS TAKEN AT JUNE 28 and 29, 2012 MEETINGS

At its special meetings on June 28 and 29, the San Francisco Ethics Commission continued the evidentiary phase of the hearing on the charges of official misconduct pending against Sheriff Ross Mirkarimi. The Commission took the following interim actions:

- With respect to the declarations filed by the Mayor's and the Sheriff's witnesses, the Commission preliminarily sustained, modified or overruled various objections by the parties (these rulings will be detailed in a subsequent document);
- With respect to the video of Eliana Lopez, the Commission preliminarily admitted the video;
- Heard testimony from and asked questions of the following live witnesses: Sheriff Ross Mirkarimi, Mayor Edwin M. Lee, and the Mayor's expert witness, San Diego Chief of Police William Lansdowne;
- Approved the following schedule:

Due Date	Item
July 2, 2012	<ul style="list-style-type: none"><li>• Eliana Lopez to resubmit and re-sign her declaration to attest that the declaration is submitted under penalty of perjury under the laws of the State of California</li></ul>
July 10, 2012	<ul style="list-style-type: none"><li>• The Mayor to provide objections to the declaration of Eliana Lopez</li><li>• The Mayor to identify rebuttal witnesses, if any</li><li>• The Sheriff to advise whether Former Sheriff Michael Hennessey will appear for live testimony</li></ul>
July 17, 2012	<ul style="list-style-type: none"><li>• The Sheriff to respond to objections to the declaration of Eliana Lopez</li><li>• The parties, having met and conferred, to provide stipulation regarding the expert declaration of Nancy K.D. Lemon</li><li>• The Sheriff to identify the portions of allegations in the</li></ul>

	Amended Charges of Official Misconduct, Bill of Particulars, that he disputes
July 18, 2012	Ethics Commission meeting (5 p.m., Room 416 City Hall): <ul style="list-style-type: none"> <li>• Linnette Peralta Haynes is expected to provide live testimony</li> <li>• Eliana Lopez is expected to provide live testimony or appear remotely</li> <li>• Former Sheriff Michael Hennessey may provide live testimony</li> </ul>
July 19, 2012	Ethics Commission meeting (5 p.m., Room 416 City Hall): <ul style="list-style-type: none"> <li>• Former Sheriff Michael Hennessey may provide live testimony</li> <li>• The Mayor's rebuttal witness(es) may provide live testimony</li> </ul>
August 10, 2012	The parties to provide findings of fact and briefing on legal issues
August 16, 2012	Ethics Commission meeting (9 a.m., Room 263 City Hall)

By votes of 5-0 at the end of each day, the Commission approved the above interim decisions made regarding evidence and scheduling. This special meeting will continue on Wednesday, July 18, 2012 at 5:00 p.m. in Room 263 City Hall.

#

The Ethics Commission, established in November 1993, serves the public, City employees and officials and candidates for public office through education and enforcement of ethics laws. Its duties include: filing and auditing of campaign finance disclosure statements, lobbyist and campaign consultant registration and regulation, administration of the public financing program, whistleblower program, conflict of interest reporting, investigations and enforcement, education and training, advice giving and statistical reporting.

S:\Commission\Meeting Summaries\2012\6.28 & 29.12.doc

**[DRAFT]**  
Minutes of the Special Meeting of  
The San Francisco Ethics Commission  
August 16, 2012  
Room 263, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

GOVERNMENT  
DOCUMENTS DEPT

SEP -7 2012

SAN FRANCISCO  
PUBLIC LIBRARY

The complete court reporter's transcript of the August 16, 2012 special meeting has been posted on the Commission's website. A copy of the transcript is also available for review at the Commission office during regular business hours.

**I. Call to order and roll call**

Chairperson Hur called the meeting to order at 9:08 a.m.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamieenne S. Studley, Vice-Chairperson; Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner; Paul A. Renne, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator (excused at approximately 2:00 p.m.); Garrett Chatfield, Investigator (arrived at approximately 2:00 p.m.)

COUNSEL FOR THE ETHICS COMMISSION: Scott Emblidge.

COUNSEL FOR THE MAYOR: Peter J. Keith, Deputy City Attorney (DCA), Sherri S. Kaiser, DCA.

OTHERS PRESENT: Sheriff Ross Mirkarimi; Shepard S. Kopp, counsel for Sheriff Mirkarimi; David Waggoner, counsel for Sheriff Mirkarimi; and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Written Charges of Official Misconduct, filed March 21, 2012.
- Memorandum from the Office of the City Attorney re: Legal Counsel for Ethics Commission and Board of Supervisors for Official Misconduct Charges, dated April 12, 2012.
- Staff Memorandum re: Recommendations on hearing on charges of official misconduct, dated April 17, 2012.
- Letter to the Ethics Commission and City Attorney from David Waggoner and Shepard Kopp, Counsel for Sheriff Mirkarimi, re: Agenda for April 23, 2012 meeting, including correspondence with Deputy City Attorney Keith, dated April 23, 2012.
- Memorandum from DCA Keith and DCA Kaiser, Counsel for the Mayor, re: Hearing on Charges of Official Misconduct Against Sheriff Ross Mirkarimi, dated April 23, 2012.

- Press Release - April 24, 2012 - Summary of Actions Taken at April 23, 2012 Meeting.
- Mayor Lee's Opening Brief on the Issues Specified by the Ethics Commission, dated April 30, 2012.
- Mayor's Initial List of Fact Witnesses, dated April 30, 2012.
- Letter to the Ethics Commission from the City Attorney, re: Sheriff Mirkarimi's Duty to Cooperate with the Official Misconduct Investigation and the Role of the Ethics Commission in that Investigation, dated April 30, 2012.
- Mayor's Initial List of Subject-Matter Expert Witnesses, dated May 7, 2012.
- Sheriff Ross Mirkarimi's Opening Brief, dated May 7, 2012.
- Sheriff Ross Mirkarimi's List of Potential Fact Witnesses, dated May 10, 2012.
- Mayor's Supplemental Disclosure of Subject-Matter Expert Witnesses, dated May 10, 2012.
- E-mail from David Waggoner to Scott Emblidge, Request for Protective Order, dated May 15, 2012.
- Request for Protective Order, dated May 15, 2012.
- E-mail from Sherri Kaiser to Scott Emblidge, Request for Protective Order -- Court papers, dated May 15, 2012.
- Order Granting Third-Party Movant City and County of San Francisco's Motion for Release of Court Record, dated May 15, 2012.
- Third-Party Movant City and County of San Francisco's Memorandum of Points and Authorities in Support of Motion for Release of Court Record, dated April 23, 2012.
- Ms. L.'s Opposition to Third Party Movant City and County of San Francisco's Motion for Release of Court Record, dated May 10, 2012.
- Reply of Third-Party Movant City and County of San Francisco to Ms. L.'s Opposition to Motion for Release of Court Record, dated May 14, 2012.
- E-mail from Sherri Kaiser to Scott Emblidge, E-mail alerting Paula Canny to Sunshine Requests, dated May 15, 2012.
- E-mail from Scott Emblidge to David Waggoner, RE: Request for Protective Order, dated May 15, 2012.
- E-mail from Sherri Kaiser to Scott Emblidge, Re: Request for Protective Order, dated May 15, 2012.
- E-mail from David Waggoner to Scott Emblidge, Re: Request for Protective Order, dated May 15, 2012.
- E-mail from Peter Keith to Scott Emblidge, Further information about today's hearing, dated May 15, 2012.
- E-mail from Scott Emblidge to Attorneys, RE: Request for Protective Order, dated May 15, 2012.
- E-mail from Sherri Kaiser to Scott Emblidge, Re: Request for Protective Order, dated May 15, 2012.
- E-mail from David Waggoner to Scott Emblidge, Re: Further information about today's hearing, dated May 15, 2012.
- E-mail from Scott Emblidge to Attorneys, Re: Request for Protective Order, dated May 15, 2012.
- Mayor's Response to Sheriff's Request for Protective Order, dated May 16, 2012.

- E-mail from Peter Keith to Attorneys, Mayor's Response to Request for Protective Order - Date Corrected, dated May 16, 2012.
- Order Re: Sheriff's Request For Protective Order, dated May 16, 2012.
- Special Meeting of the Ethics Commission, Monday, April 23, 2012 - 4:30 p.m. Transcript.
- E-mail from David Waggoner to Scott Emblidge, Sheriff's List of Expert Witnesses, dated May 17, 2012.
- E-mail from Sherri Kaiser to Attorneys, Re: Mayor's Reply Brief, dated May 18, 2012.
- Mayor Lee's Reply to Sheriff Mirkarimi's Brief on the Issues Specified by the Ethics Commission at its Meeting of April 23, 2012, dated May 17, 2012.
- Sheriff Ross Mirkarimi's List of Potential Expert Witnesses, dated May 17, 2012.
- Memorandum from the Office of the City Attorney re: Charges of Official Misconduct Against Sheriff Mirkarimi Summary of Meet and Confer Efforts; Hearing Procedure & Scheduling, dated May 25, 2012.
- [Proposed] Order Regarding Procedures for Discovery and Evidentiary Hearing, filed May 25, 2012.
- Mayor's Rebuttal Witness and Mayor's Objection to Sheriff's Witness, dated May 25, 2012.
- Ms. L's Request for Protective Order Prohibiting Public Dissemination of Video, dated May 29, 2012.
- Press Release - May 30, 2012 - Summary of Actions Taken at May 29, 2012 Meeting.
- Amended Charges of Official Misconduct, dated June 1, 2012.
- Declaration of Linnette Peralta Haynes, dated June 8, 2012.
- Declaration of Emin Tekin and Exhibits, dated February 26, 2012.
- Declaration of Deputy Chief of Staff Paul Henderson, dated June 8, 2012.
- Deputy Chief of Staff Paul Henderson Exhibits.
- Declaration of Chief San Francisco Probation Officer Wendy Still, dated June 8, 2012.
- Chief San Francisco Probation Officer Wendy Still Exhibits.
- Declaration of Interim San Francisco Sheriff Vicki Hennessy, dated June 8, 2012.
- Interim San Francisco Sheriff Vicki Hennessy Exhibits.
- Declaration of SFPD Inspector Richard Daniele and Exhibits, dated June 7, 2012.
- Declaration of Callie Williams and Exhibits, dated June 6, 2012.
- Callie Williams Additional Exhibits.
- Declaration of Mayor Edwin M. Lee, dated June 8, 2012.
- E-mail from Peter Keith to Scott Emblidge, Re: Scheduling Request, dated June 12, 2012.
- E-mail from Scott Emblidge to Attorneys, Re: Scheduling Request, dated June 13, 2012.
- Witness Christine Flores' Sworn Testimony, dated June 13, 2012.
- Witness Christine Flores' Sworn Testimony Transcripts Part 1, dated March 2, 2012.
- Witness Christine Flores' Sworn Testimony Transcripts Part 2, dated March 5, 2012.
- Declaration of Lenilyn De Leon, dated June 11, 2012.
- Declaration of Sheriff Ross Mirkarimi, dated June 13, 2012.

- Sheriff Ross Mirkarimi's Objections to Mayor's Fact Witness Declarations, filed June 13, 2012.
- The Mayor's (1) Objections to Witness Declarations and Requests for Cross-Examination of Declarants; (2) Subpoena Requests, dated June 13, 2012.
- Letter from City Attorney to John St. Croix, dated June 15, 2012, and Mayor's Exhibit 4 - The Video Statement of Ms. Lopez.
- Special Meeting of the Ethics Commission, Tuesday, May 29, 2012 - 5:30 p.m. Transcript.
- E-mail from Scott Emblidge to Attorneys, Re: Request for issuance of subpoena, dated June 14, 2012.
- Subpoena - Linnette Peralta Haynes, dated June 14, 2012.
- The Mayor's Objections to the Declaration of Sheriff Ross Mirkarimi and Request for Cross-Examination, dated June 15, 2012.
- Declaration of Ivory S. Madison, dated June 15, 2012.
- Ivory S. Madison Exhibits.
- Declaration of Abraham Mertens and Exhibits, dated June 17, 2012.
- Declaration of Michael Hennessey, dated June 1, 2012.
- Letter from City Attorney to Ethics Commission, Re: Charges Against Ross Mirkarimi, Sheriff of the City and County of San Francisco, dated June 18, 2012.
- Mayor's Brief Regarding Admissibility of Ms. Lopez's January 1 and January 4 Statements About Abuse and Exhibit, dated June 18, 2012
- Expert Declaration of Nancy K. D. Lemon and Exhibits, dated June 18, 2012.
- Expert Declaration of San Diego Chief of Police William Lansdowne and Exhibits, dated June 18, 2012.
- E-mail from Shepard Kopp to Attorneys, Re: Sheriff's Expert Witness Declaration and statement re: cross of Mayor's fact witnesses, dated June 18, 2012.
- Mayor's List of Additional Exhibits, dated June 20, 2012.
- Mayor's Exhibit 50.
- Mayor's Exhibits 78-79.
- Mayor's Exhibits 80-81.
- Sheriff's Exhibit, Terence Hallinan v. Committee on Bar Examiners, The State Bar of California.
- Press Release - June 20, 2012 - Summary of Actions Taken at June 19, 2012 Meeting - AMENDED
- Mayor's Request for Cross-Examination and Objections to Expert Declaration, dated June 22, 2012.
- Sheriff Ross Mirkarimi's Objections to Mayor's Expert Witness Declaration, and Request for Cross-Examination, dated June 22, 2012.
- Mayor's Objection to Sheriff's Exhibit, dated June 25, 2012.
- Letter from the City Attorney to the Ethics Commission, Re: Charges Against Ross Mirkarimi, Sheriff of the City and County of San Francisco, dated June 26, 2012.
- Summary of Stipulations and Remaining Disputes Regarding Madison and Mertens Declarations, dated June 26, 2012.
- Mayor's Exhibits 82 and 83 (Cover Sheet), dated June 26, 2012.

- Exhibit 82: ATT Records of Ross Mirkarimi and Eliana Lopez December 31, 2011-January 13, 2012.
- Exhibit 83: January 4, 2011 Communications Records (From Exhibits 1, 55-60, 80-82).
- Declaration of Eliana Lopez and Exhibits, dated July 2, 2012.
- Response to Sheriff Mirkarimi's Objection to the Expert Declaration of Nancy Lemon, dated June 27, 2012.
- Press Release - June 28, 2012 - Interim Rulings Made by Ethics Commission at its June 19, 2012 Meeting.
- Special Meeting of the Ethics Commission, Tuesday, June 19, 2012 - 5:00 p.m. Transcript.
- Mayor's Rebuttal Evidence and Exhibits, dated July 10, 2012.
- Mayor's Evidentiary Objections to Declaration of Eliana Lopez & Request for Cross-Examination, dated July 10, 2012.
- Sheriff's Request for Issuance of Subpoenas and Exhibits, dated July 11, 2012.
- Press Release - July 11, 2012 - Summary of Actions Taken at June 28 and 29, 2012 Meetings.
- Press Release - July 13, 2012 - Interim Rulings Made by Ethics Commission at its June 28 and 29, 2012 Meetings
- E-mail from City Attorney to Ethics Commission, Re: Mirkarimi Matter: Request for Conference Call Re: Sheriff's Subpoena Request, dated July 11, 2012.
- Letter from Paula Canny to Attorneys, Re: Testimony of Eliana Lopez, dated July 12, 2012.
- Special Meeting of the Ethics Commission, Thursday, June 28, 2012 - 5:30 p.m. Transcript.
- Letter from City Attorney to Ethics Commission, Re: Charges Against Ross Mirkarimi, Sheriff of the City and County of San Francisco, and Exhibits 84 and 87, dated July 11, 2012.
- Mayor's Opposition to Sheriff's Request for Subpoenas, dated July 17, 2012.
- Letter from Paula Canny to Attorneys, Re: Eliana Lopez, dated July 17, 2012.
- E-mail from David Waggoner to Attorneys, Re: Disputed Allegations, dated July 17, 2012.
- E-mail From Shepard Kopp to Attorneys, Re: Lemon and Lopez declarations, dated July 17, 2012.
- Sheriff's Summary of Stipulations and Remaining Disputes Regarding Declarations of Nancy Lemon and Eliana Lopez, dated July 17, 2012.
- E-mail from Sherri Kaiser to Attorneys, Re: Lemon and Lopez declarations, dated July 17, 2012.
- Special Meeting of the Ethics Commission, Friday, June 29, 2012 - 9:04 a.m. Transcript - Part I.
- Special Meeting of the Ethics Commission, Friday, June 29, 2012 - 1:05 p.m. Transcript - Part II.
- Letter from City Attorney to Ethics Commission, Re: Charges Against Ross Mirkarimi, Sheriff of the City and County of San Francisco, and Exhibits, dated July 18, 2012.



- Special Meeting of the Ethics Commission, Wednesday, July 18, 2012 - 5:06 p.m. Transcript.
- Special Meeting of the Ethics Commission, Thursday, July 19, 2012 - 5:02 p.m. Transcript.
- Press Release - August 1, 2012 - Summary of Actions Taken at July 18 and 19, 2012 Meetings.
- Press Release - August 2, 2012 - Interim Rulings Made by Ethics Commission at its July 18 and 19, 2012 Meetings.
- Witness Declarations and Exhibits in In re Mayor Edwin Lee's Charges of Official Misconduct Against Sheriff Ross Mirkarimi (Tentatively Stricken Materials Have Been Marked).
- Joint Submission of Proposed Findings Regarding Disputed Facts, filed August 10, 2012.
- Mayor Lee's Brief in Closing, dated August 11, 2012.
- Sheriff Ross Mirkarimi's Closing Brief, dated August 11, 2012.
- Emails from the public submitted to the Ethics Commission regarding Mirkarimi hearing.

## **II. The Ethics Commission will continue its hearing on charges of official misconduct pending against Sheriff Ross Mirkarimi.**

Deputy City Attorney ("DCA") Keith began his closing argument on behalf of the Mayor at 9:12 a.m. The Commissioners presented questions to DCA Keith during his argument.

David Waggoner began his closing argument on behalf of Sheriff Mirkarimi at 10:06 a.m. Shepard Kopp continued closing arguments on behalf of Sheriff Mirkarimi at 10:22 a.m. The Commissioners presented questions to Mr. Waggoner and Mr. Kopp during their arguments.

DCA Keith presented his rebuttal to the Sheriff's closing argument at 10:49 a.m. The Commissioner presented questions to DCA Keith during his rebuttal.

The Commission recessed for approximately 15 minutes at 11:02 a.m.

Public Comment began at 11:16 a.m.

Nancy Colman expressed support for Sheriff Mirkarimi.

Espinola Jackson expressed support for Sheriff Mirkarimi.

Barbara Tengery expressed support for Sheriff Mirkarimi.

Francisco De Costa expressed support for Sheriff Mirkarimi.

Julie Soo opposed reinstating Sheriff Mirkarimi.

Maureen Daggett expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Patrick Connors expressed support for Sheriff Mirkarimi.

Page Fernandez expressed support for Sheriff Mirkarimi.

Paul Currier made statements opposing Mayor Lee. [Mr. Currier supplied a written summary of his comments, which is included at the end of these minutes.]

Tracy Lemon expressed support for Sheriff Mirkarimi.

Vivian Imperiali expressed support for Sheriff Mirkarimi.

Marilee Mandahar stated domestic violence is a serious problem.

A member of the public opposed reinstating Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Sylvia Martinez expressed support for Sheriff Mirkarimi.

Emil Lawrence expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

A member of the public opposed reinstating Sheriff Mirkarimi.

A member of the public opposed reinstating Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Francesca Rosa expressed support for Sheriff Mirkarimi.

Flor Ramos expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Patricia Coleman Forsythe expressed support for Sheriff Mirkarimi.

Sarush Richard Shahabbi expressed support for Sheriff Mirkarimi.

Victoria Ashley expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Brenda Barros expressed support for Sheriff Mirkarimi.

Andrea Shorter opposed reinstating Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Bertie Shun expressed support for Sheriff Mirkarimi.

Sharon Hewitt expressed support for Sheriff Mirkarimi.

George Schuman expressed support for Sheriff Mirkarimi.

Luis Muniz expressed support for Sheriff Mirkarimi.

Dara Lorinda Jones stated sheriff deputies need supervision.

Cynthia Cruz expressed support for Sheriff Mirkarimi.

Gilberto Ramos expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Laurie Lieberman expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Tammy Bryant expressed support for Sheriff Mirkarimi.

Clarence Faulkner expressed support for Sheriff Mirkarimi.

A member of the public stated command influence is important.

Karen Levine opposed reinstating Sheriff Mirkarimi.

Susie Loftis opposed reinstating Sheriff Mirkarimi.

Josie Louise opposed reinstating Sheriff Mirkarimi.

Deborah Hanulah opposed reinstating Sheriff Mirkarimi.

Beverly Upton opposed reinstating Sheriff Mirkarimi.

Sydney Hodgman opposed reinstating Sheriff Mirkarimi.

A member of the public opposed reinstating Sheriff Mirkarimi.

Paulette Brown expressed support for Sheriff Mirkarimi.

Ana Soto expressed support for Sheriff Mirkarimi.

A member of the public opposed reinstating Sheriff Mirkarimi.

A member of the public opposed reinstating Sheriff Mirkarimi.

Barbara Marquez opposed reinstating Sheriff Mirkarimi.

A member of the public opposed reinstating Sheriff Mirkarimi.

A member of the public opposed reinstating Sheriff Mirkarimi.

Jennifer Rose opposed reinstating Sheriff Mirkarimi.

Kyra Millich expressed support for Sheriff Mirkarimi.

Carl Kruth expressed support for Sheriff Mirkarimi.

Katherine Berg opposed reinstating Sheriff Mirkarimi.

Sharon Johnson opposed reinstating Sheriff Mirkarimi.

Chrissie Keyfront expressed support for Sheriff Mirkarimi.

Arthur Munillo expressed support for Sheriff Mirkarimi.

Lindsey Verig expressed support for Sheriff Mirkarimi.

Catherine Howard expressed support for Sheriff Mirkarimi.

Michael O'Conner expressed support for Sheriff Mirkarimi.

Jim Morshel expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Barry Toranto stated that must not bring politics into their consideration of this matter.

Debra Walker expressed support for Sheriff Mirkarimi.

Michael Tong expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Michael Sandberg stated this is just a political case.

Elinia Brook expressed support for Sheriff Mirkarimi.

Guadalupe Silva Ortiz expressed support for Sheriff Mirkarimi.

Michelle White expressed support for Sheriff Mirkarimi.

Eileen Hansen stated that the relationship to the Sheriff's duties should be considered and expressed support for Sheriff Mirkarimi.

Ernestine Weiss expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Anita Cabrera stated she has lost faith in politics.

Babette Hogan expressed support for Sheriff Mirkarimi.

Don Shapiro expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Tracy Brown expressed support for Sheriff Mirkarimi.

Valerie Toury expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

Jeff Gouda expressed support for Sheriff Mirkarimi.

Roger Scott expressed support for Sheriff Mirkarimi.

A member of the public expressed support for Sheriff Mirkarimi.

The Commission recessed at 2:22 p.m.

The Commission reconvened at 3:30 p.m.

The Commissioners began public deliberations at 3:36 p.m.

After deliberating, Vice-Chairperson Studley and Commissioners Liu, Hayon, and Renne all stated that after considering the evidence, they would vote to sustain the charges of official misconduct as to counts four and five of the amended charges from the Mayor. Chairperson Hur stated that he would vote not to sustain the charges of official misconduct as to any counts.

**Motion 12-08-16-1 (Studley/Renne): Moved, seconded, and passed (4-1, Hur dissenting to part (a) of the motion only; 5-0 for parts (b) and (c) of the motion) that the Ethics Commission**

- a) Sustain the charges as to the conduct that occurred on December 31, 2011, and the subsequent conviction as reflected in Counts Four and Five of the Amended Charges of Official Misconduct;
- b) Adopt the interim rulings of the Commission made throughout the course of these proceedings; and
- c) Empower a written summary to be reviewed and ratified by the Commission at a later meeting.

### **III. Adjournment**

The meeting was adjourned at 6:33 p.m.

*This written summary was provided by the speaker, Paul Currier, during public comment for agenda item II. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

Mayor Lee faces charges before the State Bar for criminal violations of the State Bar Act. Chapter 1, Rules 1-100 forbid the misuse of public funds, perjury, and patterns of corruption.

Our District Attorney, City Attorney, Willie Brown, and Rose Pak illegally protected Mayor Lee's election frauds, collusion, graft, fraudulent conveyance of public property for private gain, and misprision of felony. These are criminal acts. The Mayor's misuse of this ethics process is transparent.

The Ethics Commission wrongfully postponed Sunshine Case 11048, where four Supervisors now face criminal charges, as their acts empowered Civil Rights violations, ADA violations, and numerous illegal evictions. This damaged many people.

We must hold the Mayor accountable. It is time to hold the money machine to account.

San Francisco must organize anew around one issue: Recall the Machine and throw all the Bums out!





SAN FRANCISCO ETHICS COMMISSION

NOTICE OF CANCELLATION OF REGULAR  
MONTHLY MEETING

August 27, 2012 5:30 P.M.

Room 400 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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MEETING IS CANCELLED

The next regularly scheduled meeting of the Commission will occur on Monday, September 24, 2012 at 5:30 p.m. in Room 400 City Hall.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Andrea Ausberry by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [sotf@sfgov.org](mailto:sotf@sfgov.org). Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Ausberry or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>.

If any materials related to an item on this agenda have been distributed to the Ethics Commission after distribution of the agenda packet, those materials are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF SPECIAL MEETING**

**September 11, 2012 3:00 P.M.**

**and AGENDA**

**Room 416 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

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- I. Call to order and roll call.
- II. Consideration of draft report to the Board of Supervisors in the matter of the charges of official misconduct pending against Sheriff Ross Mirkarimi. Under Charter Section 15.105, when the Mayor suspends an elective officer, "The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained." At its meetings of April 23, 2012; May 29, 2012; June 19, 2012; June 28, 2012; June 29, 2012; July 18, 2012; July 19, 2012; and August 16, 2012, the Commission addressed, among other things, procedural and evidentiary issues, the parties' briefs, objections to evidence and witnesses, sworn declarations, direct testimony and questions raised on and responses to cross-examination, and the parties' agreed-upon factual stipulations. At its meeting on August 16, after receiving public comment and hearing argument from the parties, the Commission voted to recommend to the Board of Supervisors that it sustain Counts 4 and 5 of the Amended Charges of Official Misconduct based upon Sheriff Mirkarimi's conduct that occurred on December 31, 2011 and his subsequent conviction for false imprisonment. The Commission also authorized the preparation of a summary document of the findings of the Commission, which will be reviewed and ratified by the Commission at this meeting. Counsel for the parties will have the opportunity to comment on the draft report, should they wish to do so. A copy of the draft report will be available from the Commission office and on its website. (Discussion and possible action.)
- III. Minutes of the special meetings of April 23, 2012; May 29, 2012; June 19, 2012; June 28, 2012; June 29, 2012; July 18, 2012; July 19, 2012; and August 16, 2012. (Discussion and possible action.)
- IV. Adjournment.

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1  
2 ETHICS COMMISSION  
3 CITY AND COUNTY OF SAN FRANCISCO  
4  
5

6 In the Matter of Charges Against  
7 ROSS MIRKARIMI,  
8 Sheriff, City and County of San Francisco.  
9

**FINDINGS OF FACT AND  
RECOMMENDATION TO BOARD OF  
SUPERVISORS**

10  
11 Pursuant to Section 15.105 of the Charter of the City and County of San Francisco, the  
12 Ethics Commission hereby makes the following findings of fact and transmits the following  
13 recommendation to the Board of Supervisors.

14 **PROCEDURAL HISTORY**

15 On March 21, 2012, Mayor Edwin M. Lee transmitted to the Ethics Commission charges  
16 of official misconduct relating to Sheriff Ross Mirkarimi. The Mayor amended these charges on  
17 June 1, 2012 to specify six separate counts of alleged official misconduct.

18 Under Charter Section 15.105, the Ethics Commission is mandated to hold a hearing on  
19 such charges. After the hearing, the Charter requires the Ethics Commission to transmit the full  
20 record of the hearing to the Board of Supervisors with a recommendation as to whether the  
21 charges should be sustained.

22 Charter Section 15.105(e) defines "Official Misconduct" as follows:

23 Official misconduct means any wrongful behavior by a public officer in  
24 relation to the duties of his or her office, willful in its character, including any  
25 failure, refusal or neglect of an officer to perform any duty enjoined on him or her  
26 by law, or conduct that falls below the standard of decency, good faith and right  
27 action impliedly required of all public officers and including any violation of a  
28 specific conflict of interest or governmental ethics law. When any City law  
provides that a violation of the law constitutes or is deemed official misconduct,  
the conduct is covered by this definition and may subject the person to discipline  
and/or removal from office.

1 This matter presents the first time that the Mayor has presented the Ethics Commission  
2 with charges of official misconduct under Charter section 15.105. To carry out its duties under  
3 the Charter, the Ethics Commission took the following actions.<sup>1</sup>

4 On April 23, 2012, the Commission met and heard from counsel for the Sheriff and the  
5 Mayor regarding, among other things, proposed procedures for the Commission to follow in  
6 conducting the hearing.

7 On May 29, 2012, the Commission again met and heard from counsel for the Sheriff and  
8 the Mayor about procedural issues. The Commission decided:

- 9 • The Mayor had the burden of demonstrating by a preponderance of the evidence that  
10 the Sheriff engaged in official misconduct.
- 11 • The rules of evidence would not be strictly applied. Some hearsay evidence might be  
12 admitted, although hearsay alone would not be permitted to establish a fact. The  
13 Commission might choose to exclude some hearsay evidence on a case by case basis.
- 14 • All direct testimony would come in by declaration, unless the witness was outside of  
15 a party's control and refused to provide a declaration.
- 16 • Either party, upon request, would be given the opportunity to cross examine witnesses  
17 who provided direct testimony via declarations.
- 18 • If a witness provided direct testimony via declaration but did not appear upon request  
19 for cross-examination, the Commission would give that witness's declaration the  
20 weight it deemed appropriate.
- 21 • Upon receipt of declarations and objections, the Commission would decide whether  
22 declarations (or parts thereof) would be admitted.
- 23 • A majority vote by the members of the Commission would be sufficient for the  
24 Commission to send its recommendations to the Board of Supervisors.

25  
26  
27 <sup>1</sup> This is a summary of the Commission's actions and is not meant to be exhaustive. All  
28 of the Commission's actions were taken during public meetings, are detailed in transcripts from  
those meetings, and are reflected in minutes of those meetings.

1 The Commission also set a schedule for the submission of declarations, objections,  
2 requests for subpoenas, and other matters.

3 On June 19, 2012, the Commission made interim rulings with respect to the admissibility  
4 of declarations filed by the Mayor's and the Sheriff's witnesses as follows:

- 5 • Admitted into evidence the following declarations submitted by the Mayor: Interim  
6 Sheriff Vicki Hennessey, San Francisco Chief Probation Officer Wendy Still (in  
7 part), SFPD Inspector Richard Daniele (in part), Callie Williams (in part), and Mayor  
8 Edwin M. Lee.
- 9 • Declined to admit into evidence the following declaration submitted by the Mayor:  
10 Deputy Chief of Staff Paul Henderson.
- 11 • Admitted into evidence the following declarations submitted by the Sheriff: Emin  
12 Tekin, Lenilyn DeLeon (in part), Linnette Peralta Haynes, and Sheriff Ross  
13 Mirkarimi (in part).

14 The Commission also made interim rulings regarding the admissibility of some of the  
15 documentary evidence submitted by the parties and set a schedule for remaining sessions of the  
16 hearing.

17 On June 28, 2012, the Commission made additional interim rulings with respect to the  
18 admissibility of declarations filed by the Mayor's and the Sheriff's witnesses as follows:

- 19 • Admitted into evidence the following declarations submitted by the Mayor: Ivory  
20 Madison (in part), Abraham Mertens (in part), and San Diego Chief of Police William  
21 Lansdowne.
- 22 • Admitted into evidence the following declaration submitted by the Sheriff: Former  
23 Sheriff Michael Hennessey (in part).
- 24 • Admitted into evidence a videotape of statements by Eliana Lopez.

25 The Commission also made interim rulings regarding the admissibility of some of the  
26 documentary evidence submitted by the parties.

27 In addition, at the request of the parties, the Commission began hearing live witness  
28 testimony of witnesses the parties wished to cross-examine. The Sheriff declined to cross-



1 examine any witnesses except the Mayor. The Mayor cross-examined all witnesses he wished to  
2 cross-examine, with the exception of former Sheriff Michael Hennessey, who did not make  
3 himself available for cross-examination. The first witness was the Sheriff.

4 On June 29, 2012, the Commission made additional interim rulings with respect to the  
5 admissibility of declarations filed by the Mayor's and the Sheriff's witnesses as follows:

- 6 • Admitted into evidence the following declaration submitted by the Mayor: Nancy  
7 Lemon (in part).
- 8 • Admitted into evidence the following declaration submitted by the Sheriff: Eliana  
9 Lopez (in part).

10 The Commission also made interim rulings regarding the admissibility of some of the  
11 documentary evidence submitted by the parties and heard testimony from the Sheriff, the Mayor,  
12 and the Mayor's expert witness, San Diego Chief of Police William Lansdowne. In addition, the  
13 Commission and both parties discussed the procedure for drafting the Commission's  
14 recommendation to the Board of Supervisors.

15 On July 18, 2012, the Commission made additional interim rulings and heard testimony  
16 from Linnette Peralta Haynes and Eliana Lopez.

17 On July 19, 2012, the Commission made additional interim rulings including

- 18 • Determined that it would not be necessary to receive live testimony from the Mayor's  
19 proposed rebuttal witness, Inspector Mike Becker, SFPD.
- 20 • Denied the Sheriff's request for the issuance of subpoenas for four witnesses to testify  
21 about two collateral issues: (1) whether the Mayor sought the advice of a Supervisor  
22 prior to taking action against the Sheriff, and (2) whether someone potentially  
23 associated with the Mayor offered the Sheriff a lower-ranking position in exchange  
24 for his resignation.

25 The Commission also heard additional testimony from Eliana Lopez, and established a  
26 schedule for closing briefs and arguments.

27 On August 16, 2012, the Commission heard closing arguments, deliberated and voted on  
28 findings of fact and recommendations as discussed below.

## FINDINGS OF FACT

The Ethics Commission unanimously finds that the Mayor proved the following facts by a preponderance of the evidence:

1. Between November 8, 2011, and January 8, 2012, Ross Mirkarimi had the duty and the power in his official capacity as Sheriff-Elect to work with the Sheriff's Department and its officials to prepare himself to assume the full duties of Sheriff. Sheriff Mirkarimi also had the duty and the power as Sheriff-Elect to represent the Sheriff's Department to the public. Sheriff Mirkarimi exercised those official powers.

2. On January 8, 2012, Ross Mirkarimi ceased to be a member of the Board of Supervisors and assumed all powers and duties of the Sheriff of the City and County of San Francisco. Sheriff Mirkarimi exercised those official powers.

3. On or about December 31, 2011, during the time he was incumbent Supervisor and Sheriff-Elect, Ross Mirkarimi committed acts of verbal and physical abuse against his wife, Eliana Lopez. Among other things, Mr. Mirkarimi grabbed Ms. Lopez with such force that he bruised her upper right arm.

4. During that incident Mr. Mirkarimi restrained Ms. Lopez and violated her personal liberty.

5. On January 8, 2011, Sheriff Mirkarimi took the oath of office.

6. On or about January 8, 2011, Sheriff Mirkarimi resigned from the Board of Supervisors.

7. On March 12, 2012, Sheriff Mirkarimi pled guilty to the crime of false imprisonment of his spouse.

## RECOMMENDATION

Based on the foregoing findings of fact, the evidence presented to the Ethics Commission over the course of the hearing, the applicable legal authorities and the arguments of counsel for the Sheriff and the Mayor, the Ethics Commission – by a vote of 4-1 (Chairperson Hur dissenting) – makes the following recommendation to the Board of Supervisors:

1 The Board should sustain the charges of Official Misconduct against Sheriff Ross Mirkarimi  
2 based on the seriousness of the incident that occurred on December 31, 2011, and the subsequent  
3 conviction as reflected in counts Four and Five of the amended charges of official misconduct  
4 filed by the Mayor. The Sheriff's conduct, as described in the foregoing findings of fact, "falls  
5 below the standard of decency, good faith and right action impliedly required of all public  
6 officers." In addition, this conduct relates to the duties of the office of Sheriff within the City  
7 and County of San Francisco, and in particular, relates to the Sheriff's responsibilities as a top  
8 law enforcement officer of the City and in administering the City's domestic violence programs.  
9 While there may be some room for disagreement under the Charter regarding whether "conduct  
10 that falls below the standard of decency" must be "in relation to the duties" of a specific office,  
11 any such ambiguity is irrelevant here because the Commission finds that the Sheriff's conduct  
12 did relate to the duties of his office. Moreover, the Commission believes that the phrase "in  
13 relation to the duties of office" should be interpreted broadly enough to uphold the voters' intent  
14 when they placed this language in the Charter. If the voters had intended for the standard to be  
15 narrowly defined, more limiting language could have been used. Furthermore, the Sheriff's  
16 reliance on *Mazzola v. City and County of San Francisco*, 112 Cal.App.3d 141 (1980) is  
17 unpersuasive because the Charter at that time did not include the "standard of decency" clause  
18 that is at issue in our case. Because the *Mazzola* Court did not evaluate this specific clause, its  
19 reasoning is not controlling here.

20 Commissioner Hur dissented, arguing that while the Sheriff had clearly engaged in  
21 misconduct, it was not "official" misconduct because it was not committed in "relation to the  
22 duties of his or her office." The parties agreed that Section 15.105 assumes a difference between  
23 "official" and "personal" misconduct, and Commissioner Hur argued that public policy and case  
24 law supported a narrow, bright-line delineation between them. Accordingly, he interpreted the  
25 phrase "in relation to the duties of his or her office" to mean wrongful conduct while performing  
26 the duties of office or purporting to perform the duties of office. He asserted that without this  
27 clear definition, the City risked confusion and ad-hoc future interpretations of "official"  
28 misconduct. Moreover, while the parties identified no case law specifically interpreting Section

1 15.105(e), Commissioner Hur argued that the California Court of Appeal had interpreted the key  
2 language at issue—"in relation to the duties of his office"—consistent with this narrow, bright  
3 line rule. *Mazzola v. City and County of San Francisco*, 112 Cal.App.3d 141, 149 (1980).<sup>2</sup>

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26 <sup>2</sup> The parties agreed that under Section 15.105(e), "conduct that falls below the standard of  
27 decency, good faith and right action impliedly required of all public officers" must be "in  
28 relation to the duties of his or her office." (Mayor's Closing Brief at 6-7; Sherriff's Closing  
Brief at 6). Accordingly, Commissioner Hur argued that although *Mazzola* did not interpret the  
"conduct" clause of Section 15.105(e), it is limited by the same "in relation to the duties" clause  
that the *Mazzola* Court interpreted.



**[DRAFT]**  
Minutes of the Special Meeting of  
The San Francisco Ethics Commission  
September 11, 2012  
Room 416, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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**I. Call to order and roll call**

Chairperson Hur called the meeting to order at 3:00 p.m.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner; Paul A. Renne, Commissioner. Jamienne S. Studley, Vice-Chairperson was excused.

STAFF PRESENT: Mabel Ng, Deputy Executive Director; Garrett Chatfield, Investigator

COUNSEL FOR THE ETHICS COMMISSION: Scott Emblidge.

COUNSEL FOR THE MAYOR: Peter J. Keith, Deputy City Attorney (DCA), Sherri S. Kaiser, DCA.

OTHERS PRESENT: Sheriff Ross Mirkarimi; David Waggoner, counsel for Sheriff Mirkarimi; Paula Canny; Patrick Monette-Shaw; Sue Ghisam; Barbara Tanquary; and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Draft Findings of Fact and Recommendation to Board of Supervisors
- Minutes for the Ethics Commission Special Meeting of April 23, 2012
- Minutes for the Ethics Commission Special Meeting of May 29, 2012
- Minutes for the Ethics Commission Special Meeting of June 19, 2012
- Minutes for the Ethics Commission Special Meeting of June 28, 2012
- Minutes for the Ethics Commission Special Meeting of June 29, 2012
- Minutes for the Ethics Commission Special Meeting of July 18, 2012
- Minutes for the Ethics Commission Special Meeting of July 19, 2012
- Minutes for the Ethics Commission Special Meeting of August 16, 2012

**II. Consideration of draft report to the Board of Supervisors in the matter of the charges of official misconduct pending against Sheriff Ross Mirkarimi.**

Chairperson Hur stated that he wanted to clarify that the Charter outlines what must occur if the Board of Supervisors determines that Sheriff Mirkarimi engaged in official misconduct. He

stated that the Charter does not provide the Ethics Commission with the discretion to recommend alternatives to removal.

Commissioner Hayon stated that she wanted to be on the record that her belief is that Sheriff Mirkarimi should be removed for his engagement in official misconduct.

Commissioner Renne stated that the Charter gives the Mayor discretionary power and the Ethics Commission may make the determination if the Mayor appropriately availed himself of that discretion. He stated that in this case, the Mayor did not abuse his discretion, but he also stated that he disagreed with Chairperson Hur that the Ethics Commission has no power to make a recommendation as to the appropriate punishment upon finding an official engaged in official misconduct.

Commissioner Liu stated that she understood Commissioner Hayon's position on the Ethics Commission making a recommendation to the Board of Supervisors, but she also stated that the Charter does not allow for a recommendation.

Mr. Emblidge stated that the Charter outlines the task of the Ethics Commission, which is to determine whether or not to sustain the charges of official misconduct. He stated that the Charter provides no discretion to the Ethics Commission as to the appropriate penalty.

Chairperson Hur stated that Commissioner Hayon could include a concurring opinion in the Findings of Fact and Recommendation that her view is that the Sheriff should be removed.

Commissioner Hayon agreed to include her concurrence in the Findings of Fact and Recommendation.

Chairperson Hur stated that the Mayor had proposed several edits to the Findings of Fact and Recommendation, which are correct. He thus proposed amendments to reflect those edits.

Commissioner Renne stated that the Findings of Fact section should include a statement that the Commission did not find credible the version of the incident that Ms. Lopez and Sheriff Mirkarimi testified to before the Commission, and that the video evidence of Ms. Lopez was more credible.

Commissioner Liu stated that she agreed with Commissioner Renne, but that the statement should be included in the Discussion section rather than the Findings of Fact section. Commissioner Renne agreed.

Commissioner Renne also stated that a sentence should be added describing the actual sentence that was imposed upon Sheriff Mirkarimi for his conviction.

Chairperson Hur and Commissioner Liu agreed, but both stated that the sentence should be in the Discussion section.



Mr. Waggoner objected to adding any language that would change what the Ethics Commission has already determined, or information that is not relevant.

Chairperson Hur stated that the Board of Supervisors wants a representative from the Ethics Commission to attend its hearing regarding Sheriff Mirkarimi. He suggested Mr. Emblidge be that representative.

Mr. Waggoner objected to the overall language in the Findings of Fact and Recommendation, stating that the document was one-sided and did not include any language that the Ethics Commission had rejected the factual basis of many of the allegations.

Chairperson Hur stated that it is highly unusual to include facts that were not found by a body into a findings of fact.

Mr. Waggoner also objected to the Ethics Commission's refusal to allow several witnesses to testify during the hearing in order to determine whether or not the Mayor committed perjury during his testimony.

Chairperson Hur stated that the Commission discussed that issue and determined that it was collateral to this proceeding.

Commissioner Liu stated that the issue of perjury was not before the Ethics Commission. She stated that the Ethics Commission applied a fundamental rule of evidence that it has the discretion not to pursue collateral matters, and that the issue of perjury is not appropriately determined by the Ethics Commission.

Mr. Waggoner stated that the counts in the Mayor's charging document were the charges and the Commission did not sustain all of the charges, so that information should be included in the Findings of Fact and Recommendation.

Chairperson Hur stated that the majority found that there was a basis to sustain the charges in counts four and five and the document reflects that determination.

Mr. Waggoner objected to Mr. Emblidge representing the Commission at the hearing before the Board of Supervisors because Mr. Emblidge also represents the Board regarding this matter.

Mr. Emblidge stated that he was retained pro bono to represent the Ethics Commission and the Board of Supervisors. He stated that he was retained by separate agreement for each body and that the retainer of his services was discussed at public meetings.

Chairperson Hur stated that Mr. Emblidge could represent both bodies without triggering a conflict of interest, but to avoid the perception of a conflict, another representative should attend the Board hearing.

After discussion, the Commissioner's determined Chairperson Hur should be the Ethics Commission's representative at the hearing at the Board of Supervisors. The parties did not object to Commissioner Hur being the representative.

Public Comment:

Patrick Monette-Shaw stated that the debate about who should represent the Ethics Commission at the Board hearing was shocking. He stated that Larry Bush wrote an article about Chairperson Hur's dissent, and that the Ethics Commission's Findings of Fact and Recommendation rewrites what occurred at the meeting. He stated that the article stated that the Ethics Commission did not sustain the Mayor's charges.

Sue Ghisam stated that there is already a public perception that this process is political. She stated that the Board hearing should be delayed until after the election.

Barbara Tanquary stated that the culture of Latina females is that they are emotional, and the video of Ms. Lopez is not actual fact. She stated that the Board hearing should be delayed until after the election. She stated that she wanted the Sheriff to get his job back.

Paula Cany stated that she has been a criminal defense attorney for 32 years. She stated that plea bargains in misdemeanor cases are used so that police officers may keep their jobs. She stated that when a firefighter or police officer is convicted of domestic violence, the plea deal allows them to stay employed in their professions and allows for rehabilitation.

**Motion 12-09-11-1 (Renne/Hayon) Moved, seconded, and passed (4-0, Studley excused) that the Ethics Commission approve the Findings of Fact and Recommendation to the Board of Supervisors as drafted with the following changes: 1) inserting on page 6, a paragraph that states that "Commissioner Hayon supports a finding that the official misconduct in this case merits the Sheriff's removal from office;" 2) inserting on page 6, line 6, two sentences that state "In that regard, the Commission did not find credible the version of the incident as described by the Sheriff and Ms. Lopez at the hearing. Rather, the Commission finds that the evidence contained in Ms. Lopez's video was more credible;" 3) on page 5, paragraph 7, inserting a clause that states "and the Court imposed a sentence consistent with the March 12, 2012, plea agreement as reflected in paragraph 31 of the Amended Charges;" 4) inserting on page 4, line 1, "and San Diego Chief of Police William Lansdowne;" and 5) changing on page 2, the first sentence so that it states "This matter presents the first time that the Ethics Commission has provided a recommendation to the Board of Supervisors regarding charges of official misconduct under Charter section 15.105."**

**III. Minutes of the special meetings of April 23, 2012; May 29, 2012; June 19, 2012; June 28, 2012; June 29, 2012; July 18, 2012; July 19, 2012; and August 16, 2012.**

Mr. Waggoner objected that no court reporter was present at this meeting.

Chairperson Hur stated that there is no requirement that a court reporter be present.

Chairperson Hur instructed staff to amend the minutes to indicate that the motions that occurred during the hearing were preliminary until final adoption by the Commission on August 16, 2012.

Public Comment:

Patrick Monette-Shaw stated that it is customary for court orders to include which motions were sustained and which were denied, and that the Findings of Fact and Recommendation should include that information. He stated that the Ethics Commission exhibits unethical behavior.

Paula Canny stated that she was speaking on behalf of her client, Ms. Lopez. She stated that Ms. Lopez was dismayed that the Commission determined her testimony was not credible. She stated that Ms. Lopez stated the truth. She stated Sheriff Mirkarimi and Ms. Lopez deserve compassion. She stated the only reason the video was made was so that it could be used in a possible custody dispute.

**Motion 12-09-11-2 (Hayon/Liu) Moved, seconded, and passed (4-0, Studley excused) that the Ethics Commission approve the minutes for the Special Meetings of April 23, 2012; May 29, 2012; June 19, 2012; June 28, 2012; June 29, 2012; July 18, 2012; July 19, 2012; and August 16, 2012; as amended.**

Mr. Waggoner stated that he submitted a request that the Ethics Commission delay delivering the record of these proceedings to the Board of Supervisors and wanted to know the status of that request.

The Commissioners confirmed that the request raised a procedural issue that has been delegated to Chairperson Hur to handle.

Chairperson Hur stated that he will issue an order in writing.

Mr. Waggoner also stated that he submitted a legal analysis that was anonymously given to him and he would like that analysis included in the record.

Chairperson Hur stated that documents submitted by individuals who are not a party to the matter will not be included in the record.

**IV. Adjournment**

The meeting was adjourned at 4:39 p.m.



Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF REGULAR MEETING**

**September 24, 2012 5:30 P.M.**

**and AGENDA**

**Room 400 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

GOVERNMENT  
DOCUMENTS DEPT

SEP 24 2012

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Consideration of draft amendments to the Commission's regulations governing the handling of complaints alleging violations of the Sunshine Ordinance and referrals of such complaints from the Sunshine Ordinance Task Force ("SOTF"). In 2010, Commission staff prepared an earlier version of the draft amendments, which were forwarded to the SOTF for its review and comments on August 17, 2010. On August 1, 2011, the SOTF provided comments, along with alternate proposals. At its meeting on November 14, 2011, the Commission began consideration of a revised set of proposals from staff. At an April 13, 2012 joint meeting, members of the Commission and the SOTF discussed revised proposals, providing guidance to staff for the development of proposed amendments to the regulations that will be considered at this meeting. The proposed amendments, along with a staff report, will be available from the Commission office and on its website. There will be an opportunity for public comment. (Discussion and possible action.)
- IV. Consideration of a draft follow-up letter to the Mayor regarding Jewelle Gomez, President of the San Francisco Library Commission. After its July 11, 2011 meeting, the Commission sent a letter to the Mayor to recommend that he consider the removal of Ms. Gomez from the Library Commission because the Commission determined that she willfully violated the Sunshine Ordinance, and that her actions fell below the standards of appropriate conduct for a public official. At this meeting, the Commission will consider whether to send a follow-up letter to the Mayor regarding this matter. (Discussion and possible action.)
- V. Consideration of Ethics Complaint Nos. 08110816 and 09110816, alleging that Executive Director John St. Croix and Tonia Lediju of the Controller's Office willfully violated the Sunshine Ordinance. These matters were referred to the San Jose City Attorney's Office for investigation and review. At this meeting, the Commission will deliberate the San Jose City Attorney's Office's recommendations

regarding the complaints. A report from the San Jose City Attorney's office will be available at the Commission's office and on the Commission's website. (Discussion and possible action.)

VI. Closed session. (Discussion and possible action.)

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 2

VII. Discussion and vote regarding closed session action and deliberations. (Discussion and possible action.)

Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation as plaintiff.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

VIII. Minutes of the Commission's regular meeting of July 23, 2012 and special meeting of September 11, 2012. (Discussion and possible action.)

IX. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Discussion.)

X. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Adjournment.

*Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Andrea Ausberry by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [sotf@sfgov.org](mailto:sotf@sfgov.org). Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Ausberry or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>.*

*If any materials related to an item on this agenda have been distributed to the Ethics Commission after distribution of the agenda packet, those materials are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.*

*The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.*

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*This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.*

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*Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site [www.sfetethics.org](http://www.sfetethics.org)*

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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

JAMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: September 14, 2012

To: Members, Ethics Commission

From: John St. Croix, Executive Director

By: Catherine Argumedo, Investigator/Legal Analyst  
Garrett Chatfield, Investigator/Legal Analyst

Re: Regulations Regarding Enforcement of Sunshine Ordinance Complaints

## INTRODUCTION

The Ethics Commission is one of several bodies enumerated in the Sunshine Ordinance, San Francisco Administrative Code Chapter 67, ("the Ordinance") to handle alleged violations of public records and public meeting laws. The proposed regulations are intended to streamline the complaint process for violations of the Ordinance that come before the Ethics Commission, to clarify ambiguities about the Ethics Commission's role and enforcement power under the Ordinance, to provide a standardized way in which staff must handle those complaints, and to ensure a transparent process that is open to the public.

The following proposed regulations are applicable only as to the manner in which the Ethics Commission and its staff must proceed in regards to alleged violations of the Ordinance. These regulations do not displace policies and procedures put in place by the Sunshine Ordinance Task Force ("Task Force") regarding how it handles complaints under the Ordinance; nor are these regulations intended to limit any remedies available to the Task Force under section 67.21(e), or any other provision of the Ordinance.

## BACKGROUND

On June 7, 2010, staff presented to the Ethics Commission ("Commission") a memorandum regarding possible regulations governing the Commission's handling of complaints alleging violations of the Ordinance. Staff drafted a set of regulations and forwarded the draft to the Task Force for review and comments on August 17, 2010. The Task Force responded in writing with its own proposed regulations to the Ethics Commission approximately one year later, on August 1, 2011.

On November 14, 2011, the Ethics Commission initiated a discussion regarding staff's proposed regulations. On April 13, 2012, the Ethics Commission and Sunshine

Ordinance Task Force Compliance and Amendments Committee held a joint meeting to discuss staff's proposed regulations. The Ethics Commission directed staff to revisit its proposed regulations and draft a two-track regulation scheme as discussed at the joint meeting.

The Commission has discussed and adopted the following policy directives:

1. Pursuant to Sunshine Ordinance section 67.34, the Commission has jurisdiction over complaints alleging willful violations of the Ordinance by elected officials and department heads. Under section 67.30(c), the Commission also has jurisdiction over complaints alleging (a) non-willful violations of the Ordinance by elected officials and department heads, (b) willful violations of the Ordinance by all City officers and employees, and (c) non-willful violations of the Ordinance by all City officers and employees.
2. Under the Ordinance, the Commission is not bound by the Task Force's prior determinations regarding complaints. But the Task Force may continue to refer complaints, in its discretion, to the Commission.
3. Except as they relate to willful violations by elected officials and department heads, referrals from the Task Force will be handled by the Commission through a Show Cause hearing in which the Respondent(s) bears the burden of proof and must demonstrate the Task Force erred in its determination.
4. The Commission has the jurisdiction to establish penalties for violations of the Ordinance, including whether to impose monetary fines or other penalties or to find official misconduct by elected officials and department heads.

Following the November 14, 2011 Ethics Commission meeting in which these regulations were first discussed, staff reserved the resolution of any complaints alleging violations of the Ordinance until the Commission adopted the regulations. Currently, the resolution of seven complaints awaits the adoption of these regulations. The Commission received these complaints from the Task Force between December 2011 and July 2012.

### **RELEVANT PROVISIONS OF THE SUNSHINE ORDINANCE**

Under the Charter, the Commission has the authority to adopt regulations reasonably interpreting ambiguities in the law. S.F. Charter § 15.102. Five provisions of the Sunshine Ordinance are relevant here. They are set forth below.

1. ***S.F. Administrative Code section 67.30(c):***

The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts.

2. ***S. F. Administrative Code section 67.34:***

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

3. ***S.F. Administrative Code section 67.35:***

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

(c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city official or state official 40 days after a complaint is filed.

4. ***S.F. Administrative Code section 67.21(d):***

If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

5. ***S.F. Administrative Code section 67.21(e):***

If the custodian [of a public record] refuses, fails to comply, or incompletely complies with a [public records] request . . . or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the

Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

## **SUMMARY OF PROPOSED REGULATIONS**

The remainder of this memo sets forth and discusses the new regulations proposed by staff. This memo presents a series of decision points for the Commission's consideration, followed by a final decision point to adopt the regulations as a whole. Staff has included the language as it is proposed in the regulations in *bold italics* below to facilitate discussion on each section. In order to facilitate the adoption of these regulations, staff suggests that any changes the Commission would like to make to a proposed section be stated in the motion adopting that section. Staff may then craft the regulations per the Commission's changes, if any. Under Charter section 15.102, the Commission may adopt regulations addressing ordinances within its jurisdiction. A regulation adopted by the Commission shall become effective 60 days after the date of its adoption unless before the expiration of the 60-day period, two-thirds of all members of the Board of Supervisors vote to veto the regulation.

## **CHAPTER ONE**

### **I. Section I – PREAMBLE**

The proposed preamble in the draft regulations establishes the purpose of the regulations and the jurisdiction of the Commission regarding complaints alleging violations of the Sunshine Ordinance.

*Pursuant to San Francisco Charter section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, S.F. Admin. Code §§ 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.*

**Decision Point 1-1:** Shall the Commission approve the draft language in the preamble of the proposed regulations, as set forth above?

## 2. Section II – DEFINITIONS

This section establishes the definitions for terms as used within the proposed regulations.

*For purposes of these Regulations, the following definitions shall apply:*

- A. *"Brown Act" means California Government Code sections 54950-54963.*
- B. *"Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.*
- C. *"California Public Records Act" means California Government Code section 6250, et seq.*
- D. *"City" means the City and County of San Francisco.*
- E. *"City officer" means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.<sup>1</sup>*
- F. *"Commission" means the Ethics Commission.*
- G. *"Complaint" means a Task Force referral, or a written document submitted directly to the Ethics Commission, or a matter initiated by Ethics Commission staff, alleging a violation of the Sunshine Ordinance.*
- H. *"Complainant" means a person or entity that filed the original complaint alleging a violation of the Sunshine Ordinance. "Complainant" shall also mean the Commission if the complaint was initiated by the Commission staff.*
- I. *"Custodian" means a City officer or employee having custody of any public record.*
- J. *"Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.*
- K. *"Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or*

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<sup>1</sup> San Francisco Administrative Code, section 1.50, states that "officers of the City and County shall be the officers elected by vote of the people, members of the Board of Education, members of boards and commissions appointed by the Mayor and the Board of Supervisors, members of the Building Inspection Commission, members of the Ethics Commission, members of the Elections Commission, members of the Retirement Board, members of the Health Service Board, members of the Sunshine Ordinance Task Force, members of the Youth Commission, members of the Small Business Commission, members of the Board of Law Library Trustees, the Superintendent of Schools, the executive appointed as the chief executive officer under each board or commission, the Controller, the City Administrator, the head of each department under the Mayor, and such other officers as may hereafter be provided by law or so designated by ordinance."

*fax. In any proceeding, the Commission Chairperson, designated Commissioner or hearing officer may order that the delivery of briefs or other materials be accomplished by e-mail.*

*L. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.*

*M. "Exculpatory information" means information tending to show that the Respondent is not guilty of the alleged violation(s).*

*N. "Mitigating information" means information tending to excuse or reduce the culpability of the Respondent's conduct.*

*L. "Order of Determination" means 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.*

*O. "Public Records" means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.*

*P. "Referral" means a written document from the Task Force to the Commission initiating an Ethics Commission complaint.*

*Q. "Respondent" means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.*

*R. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.*

*S. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.*

*T. "Willful violation" means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.*

Decision Point 1-2: Shall the Commission adopt the proposed definitions, as set forth above?
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## **CHAPTER TWO**

### **1. Section I – COMPLAINTS REFERRED TO THE ETHICS COMMISSION FROM THE TASK FORCE UNDER SUNSHINE ORDINANCE SECTION 67.30(c) – PROCESS FOR SHOW CAUSE HEARING.**

Chapter Two, Section I, specifies the process by which the Commission will handle complaints alleging violations of the Ordinance referred by the Task Force under section 67.30(c) of the



Sunshine Ordinance. The process under this section will apply to (a) non-willful violations by City officers and employees, (b) willful violations by City officers, other than elected officials and department heads, and City employees, and (c) non-willful violations by elected officials and department heads.

Note that in section II.F of Chapter Two, and in section III.C of Chapter Three, staff has included language to provide for monetary penalties of up to \$5,000 per violation be paid by Respondent's department to the General Fund of the City. While the Sunshine Ordinance provides for court costs and attorneys' fees for a prevailing plaintiff, it is silent on monetary penalties. Staff has included these provisions to provide a basis for discussion among the Commission members.

**A. Filing Complaints.**

*1. Pursuant to Sunshine Ordinance section 67.30(c), the Task Force shall make referrals whenever it concludes that any City officer or employee has violated any provision of the Sunshine Ordinance.*

*2. Under this Chapter, the Ethics Commission will conduct a show cause hearing on any referral from the Task Force alleging (a) non-willful violations by City officers and employees, (b) willful violations by City officers, other than elected officials and department heads, and City employees, or (c) non-willful violations by elected officials and department heads.*

**Decision Point 2-1(A):** Shall the Commission approve the language set forth above in Chapter Two, Section I.A of the proposed regulations?

*B. Scheduling of Show Cause Hearing. After receipt of a Task Force referral, the Commission shall schedule a Show Cause hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.*

**Decision Point 2-1(B):** Shall the Commission approve the language set forth above in Chapter Two, Section I.B of the proposed regulations?

**2. Section II – SHOW CAUSE HEARING**

Chapter Two, Section II, establishes the Show Cause hearing and its procedure.

*A. Public Hearing. The Show Cause hearing shall be open to the public. The Commission may hold the hearing, or the Commission may assign one of its members or a hearing officer to hold the hearing.*

**Decision Point 2-2(A):** Shall the Commission approve the language set forth above in Chapter Two, Section II.A of the proposed regulations?

*B. Standard of Proof. The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.*

**Decision Point 2-2(B):** Shall the Commission approve the language set forth above in Chapter Two, Section II.B of the proposed regulations?

*C. Role of the Executive Director. The Executive Director shall have no prosecutorial or adjudicative role at the Show Cause hearing.*

**Decision Point 2-2(C):** Shall the Commission approve the language set forth above in Chapter Two, Section II.C of the proposed regulations?

*D. Hearing Procedure. Each Respondent and Complainant may speak on his or her own behalf, subject to a time limit determined by the Commission Chairperson, the Commission member assigned to hold the hearing, or the hearing officer. Alternatively, each Respondent or Complainant may designate a representative to address the Commission on his or her behalf. The Complainant's representative may be a current member of the Task Force. At his or her discretion, the Commission Chairperson, the Commission member assigned to hold the hearing, or the hearing officer may allow additional testimony.*

*Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.*

**Decision Point 2-2(D):** Shall the Commission approve the language set forth above in Chapter Two, Section II.D of the proposed regulations?

*E. Deliberations and Findings. The Commission shall deliberate the merits of the allegations in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.*

*The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.*

*To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that based on a preponderance of the evidence, a person of ordinary caution and prudence would conclude that the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:*

*(a) whether the Respondent complied with all aspects of the Sunshine Ordinance, but failed to comply within the appropriate time-frame;*

- (b) the volume of records requested, and the extent to which they were practically accessible;*
- (c) whether the Respondent relied in good faith on an exception provided for by the Sunshine Ordinance in committing the alleged Sunshine Ordinance violation; and*
- (d) whether the Respondent consulted with City counsel or relied on the advice of another City officer or City employee prior to committing the alleged violation.*

**Decision Point 2-2(E):** Shall the Commission approve the language set forth above in Chapter Two, Section II.E of the proposed regulations?

**F. Administrative Orders and Penalties; Warning Letters.**

**1.** *If the Commission agrees with the Task Force that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders and penalties requiring any or all of the following:*

- (a) the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or*
- (b) the Respondent's department, commission, or board to pay a monetary penalty to the General Fund of the City of up to five thousand dollars (\$5,000) for each violation; and/or*
- (c) the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or*
- (d) the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.*

*After issuing an order and penalties or instructing the Executive Director to issue a warning letter or upon a finding of no violation, the Commission shall take no further action on the complaint.*

**2.** *When deciding penalties, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:*

- (a) the severity of the violation;*
- (b) the presence or absence of any intention to conceal, deceive, or mislead;*
- (c) whether the violation was an isolated incident or part of a pattern; and*
- (d) whether the Ethics Commission previously found that the Respondent violated the Sunshine Ordinance.*

**Decision Point 2-1(F):** Shall the Commission approve the language set forth above in Chapter Two, Section II.F of the proposed regulations?

**G. Public Announcement.**

*Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission shall publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.*

**Decision Point 2-1(G):** Shall the Commission approve the language set forth above in Chapter Two, Section II.G of the proposed regulations?

**CHAPTER THREE**

Chapter Three, Section I, specifies the process by which the Commission will handle complaints alleging willful violations of the Ordinance by elected officials and department heads referred to the Commission by the Task Force. The process under this section will also apply to (a) all other complaints alleging both willful and non-willful violations filed directly with the Commission, and (b) complaints alleging violations of the Ordinance initiated by staff.

**1. Section I - COMPLAINTS REFERRED TO THE ETHICS COMMISSION FROM THE TASK FORCE UNDER SUNSHINE ORDINANCE SECTION 67.34 AND ALL COMPLAINTS FILED DIRECTLY WITH THE COMMISSION UNDER 67.35(d).**

**A. Filing Complaints.**

- 1. Pursuant to Sunshine Ordinance section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.*
- 2. Pursuant to Sunshine Ordinance section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order, made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply under this Chapter.*
- 3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance by any City officer or City employee.*
- 4. This Chapter will govern (a) referrals from the Task Force alleging willful violations of the Sunshine Ordinance by an elected official or department head, and (b) complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or City employee.*

5. *Any referral from the Task Force that does not allege a willful violation of the Sunshine Ordinance by an elected official or department head shall be handled pursuant to Chapter Two of these regulations.*

**Decision Point 3-1(A):** Shall the Commission approve the language set forth above in Chapter Three, Section I.A of the proposed regulations?

**B. Scheduling of Hearing.**

- 1) *When the Executive Director receives a Task Force referral alleging a willful violation of the Sunshine Ordinance by an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall schedule a public hearing at a regular meeting of the Commission at least 15 business days after the conclusion of his or her investigation.*
- 2) *At least 15 business days in advance of the hearing date, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.*
- 3) *In the case of a Task Force referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the Task Force.*

**Decision Point 3-1(B):** Shall the Commission approve the language set forth above in Chapter Three, Section I.A of the proposed regulations?

**2. Section II - INVESTIGATION AND RECOMMENDATION**

This section establishes the role of the Executive Director, the investigation timeline, and the Executive Director's recommendation and responses from the parties in interest.

**A. Factual Investigation.** *Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.*

**Decision Point 3-2(A):** Shall the Commission approve the language set forth above in Chapter Three, Section II.A of the proposed regulations?

**B. Subpoenas.**

*During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.*

**Decision Point 3-2(B):** Shall the Commission approve the language set forth above in Chapter Three, Section II.B of the proposed regulations?

**C. Report and Recommendation.**

*1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation, including any exculpatory or mitigating information. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.*

*2. The report shall recommend one of the following: a) that Respondent(s) willfully violated the Sunshine Ordinance; b) that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or c) that Respondent(s) did not violate the Sunshine Ordinance. The report and recommendation shall be delivered to the Commission, Complainant and Respondent pursuant Chapter Three, section I.B.2.*

**Decision Point 3-2(C):** Shall the Commission approve the language set forth above in Chapter Three, Section II.C of the proposed regulations?

**D. Response to the Report and Recommendation.**

*1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.*

*2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.*



**Decision Point 3-2(D):** Shall the Commission approve the language set forth above in Chapter Three, Section II.D of the proposed regulations?

### **3. Section III - PUBLIC HEARING**

This section establishes the procedures of the public hearing for allegations of willful violations of the Sunshine Ordinance against elected officials and department heads, complaints initiated by staff, and complaints filed directly with the Commission pursuant to section 67.35(d).

#### **A. General Rules and Procedures.**

*1. Public Hearing. The hearing shall be open to the public. The Commission may hold the hearing, or the Commission may assign one of its members or a hearing officer to hold the hearing.*

*Each Complainant and Respondent may speak on his or her behalf, subject to a time limit determined by the Commission Chairperson, the Commission member assigned to hold the hearing, or the hearing officer. Each Respondent or Complainant may designate a representative to address the Commission on his or her behalf. The Complainant's representative may be one sitting member of the Task Force. At his or her discretion, the Commission Chairperson, the Commission member assigned to hold the hearing, or the hearing officer may allow additional testimony. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.*

*Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.*

*2. Standard of Proof. The Commission shall make the determination that a violation of the Sunshine Ordinance occurred only if a person of ordinary caution and prudence would so conclude, based on a preponderance of the evidence.*

*3. Role of the Executive Director. Except when a complaint is staff-initiated or initiated pursuant to section 67.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.*

**Decision Point 3-3(A):** Shall the Commission approve the language set forth above in Chapter Three, Section III.A of the proposed regulations?

#### **B. Deliberations and Findings.**

*The Commission shall deliberate the merits of the allegations in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.*



*The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.*

*To determine whether a violation of the Sunshine Ordinance is willful, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:*

- (a) whether the Respondent complied with all aspects of the Sunshine Ordinance, but failed to comply within the appropriate time-frame;*
- (b) the volume of records requested, and the extent to which they were practically accessible;*
- (c) whether the Respondent relied in good faith on an exception provided for by the Sunshine Ordinance in committing the alleged Sunshine Ordinance violation; and*
- (d) whether the Respondent consulted with counsel or relied on the advice of another City officer or City employee prior to committing the alleged violation.*

**Decision Point 3-3(B):** Shall the Commission approve the language set forth above in Chapter Three, Section III.B of the proposed regulations?

*C. Administrative Orders and Penalties.*

*1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority. In addition, the Commission may issue orders and penalties requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance.*

- (a) the Respondent to cease and desist the violation and/or produce the public record(s); and/or*
- (b) the Respondent's department, commission, or board to pay a monetary penalty to the General Fund of the City of up to five thousand dollars (\$5,000) for each violation; and/or*
- (c) the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent willfully violated the Sunshine Ordinance; and/or*
- (d) the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.*

*2. When deciding penalties, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:*

*(a) the severity of the violation;*

*(b) the presence or absence of any intention to conceal, deceive, or mislead;*

*(c) whether the violation was an isolated incident or part of a pattern; and*

*(d) whether the Ethics Commission previously found that the Respondent violated the Sunshine Ordinance.*

3. *If the Commission finds that a Respondent has violated the Sunshine Ordinance but has not committed a willful violation, the Commission may impose any of the administrative orders and penalties outlined in Chapter Two, section II.F of these regulations.*

4. *After issuing an order and penalties or instructing the Executive Director to issue a warning letter, the Commission shall take no further action on the complaint.*

**Decision Point 3-3(C):** Shall the Commission approve the language set forth above in Chapter Three, Section III.C of the proposed regulations?

**D. Finding of No Violation.**

*If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission shall take no further action on the complaint.*

**Decision Point 3-3(D):** Shall the Commission approve the language set forth above in Chapter Three, Section III.D of the proposed regulations?

## **CHAPTER FOUR**

### **1. Section I – MISCELLANEOUS PROVISIONS**

This section establishes various provisions related to how the Commission will handle complaints alleging violations of the Sunshine Ordinance. These provisions mirror several provisions already established by the Ethics Commission's Regulations for Investigations and Enforcement Proceedings. Section H establishes a one-year statute of limitations. Staff has put forward a short statute of limitations period to ensure that Sunshine Ordinance referrals and complaints are resolved in an expedited manner. This is particularly important because a goal of public records laws is to ensure that a requestor properly receives a requested public record in a timely manner.

*A. Ex Parte Communications.*

*Once a complaint is filed with the Commission or referred by the Task Force, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of an enforcement action with the Commission's staff, the Respondent, the Complainant, any member of the Task Force, any member of the public, or any person communicating on behalf of the Respondent, Complainant, or any member of the Task Force, except for communications, such as scheduling matters, generally committed between a court and a party appearing before that court.*

**Decision Point 4-1(A):** Shall the Commission approve the language set forth above in Chapter Four, Section I.A of the proposed regulations?

*B. Access to Complaints and Related Documents and Deliberations.*

*Complaints, investigative files and information contained therein shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.*

**Decision Point 4-1(B):** Shall the Commission approve the language set forth above in Chapter Four, Section I.B of the proposed regulations?

*C. Oaths and Affirmations.*

*The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.*

**Decision Point 4-1(C):** Shall the Commission approve the language set forth in Chapter Four, Section I.C of the proposed regulations?

*D. Selection of Designee by the Executive Director.*

*Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.*

**Decision Point 4-1(D):** Shall the Commission approve the language set forth in Chapter Four, Section I.D of the proposed regulations?

**E. Powers and Duties of Individual Commissioners and Hearing Officers.**

- 1. Unless otherwise provided, whenever the Commission assigns an individual Commissioner or hearing officer to hear any matter under these Regulations, the assigned Commissioner or hearing officer shall have the same authority, and be subject to the same restrictions, as the Commission.*
- 2. When the Commission sits as the hearing panel to hear a case, with an outside hearing officer presiding, the hearing officer shall rule on procedural matters and on the admission and exclusion of evidence only; and shall have no role in the decision on the merits.*

**Decision Point 4-1(E):** Shall the Commission approve the language set forth in Chapter Four, Section I.E of the proposed regulations?

**F. Extensions of Time and Continuances.**

*Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson or the individual Commissioner or hearing officer assigned to hold the hearing, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chairperson or the individual Commissioner or hearing officer assigned to hold the hearing shall have the discretion to consider untimely requests.*

*The Commission Chairperson or the individual Commissioner or hearing officer assigned to hold the hearing shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson or the individual Commissioner or hearing officer assigned to hold the hearing may grant the request upon a showing of good cause.*

*The Commission or Commission Chairperson or the individual Commissioner or hearing officer may reschedule a hearing in their discretion for good cause.*

**Decision Point 4-1(F):** Shall the Commission approve the language set forth in Chapter Four, Section I.F of the proposed regulations?

**G. Recordings.**

*Every hearing shall be electronically recorded and televised on SFGovTV. The Ethics Commission shall not be required to televise the portions of its meetings that are held in closed session or otherwise required to be confidential.*

**Decision Point 4-1(G):** Shall the Commission approve the language set forth in Chapter Four, Section I.G of the proposed regulations?

*H. Statute of Limitations.*

*No action alleging a violation of the Sunshine Ordinance by an elected official, department head, City officer, or City employee shall be commenced more than one year after the date on which the original public records request was made, or the date on which the public meeting was held for allegations of public meeting violations. The date on which the complaint is received by the Ethics Commission shall constitute the commencement of the action. If the complaint is initiated by staff, the date on which the Executive Director delivers his or her report and recommendation regarding an alleged willful violation of the Sunshine Ordinance to the Ethics Commission, as required by these Regulations, shall constitute the commencement of the action.*

**Decision Point 4-1(H):** Shall the Commission approve the language set forth in Chapter Four, Section I.H of the proposed regulations?

*I. Place of Delivery.*

*1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.*

*2. Whenever these Regulations require delivery to a Respondent, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent.*

*3. Delivery is effective upon the date of delivery, not the date of receipt.*

*4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.*

**Decision Point 4-1(I):** Shall the Commission approve the language set forth in Chapter Four, Section I.I of the proposed regulations?

*J. Page Limitations and Format Requirements.*

*Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.*

**Decision Point 4-1(J):** Shall the Commission approve the language set forth in Chapter Four, Section I.J of the proposed regulations?

*K. Conclusion of Hearing.*

*For the purposes of these Regulations, a hearing concludes on the last date on which the*

*Commission hears argument or testimony in the proceeding.*

**Decision Point 4-1(K):** Shall the Commission approve the language set forth in Chapter Four, Section I.K of the proposed regulations?

**L. Proceedings under Charter section 15.105.**

*If the Commission holds a hearing pursuant to Charter section 15.105 and one or more of the charges relates to a finding or findings the Commission made under Chapter Three of these Regulations, the Commission shall handle that finding or findings in an expedited manner.*

**Decision Point 4-1(L):** Shall the Commission approve the language set forth in Chapter Four, Section I.L of the proposed regulations?

**M. Complaints alleging Sunshine Violations against the Ethics Commission.**

*Any complaint alleging any violation of the Sunshine Ordinance against the Executive Director, any individual Ethics Commissioner, or any Ethics Commission staff member shall not be handled by the Ethics Commission. Upon the receipt of any such complaint, the Executive Director shall use his or her best efforts to refer the complaint to another California municipality to handle the complaint.*

**Decision Point 4-1(M):** Shall the Commission approve the language set forth in Chapter Four, Section I.M of the proposed regulations?

**N. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.**

*If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.*

**Decision Point 4-1(N):** Shall the Commission approve the language set forth in Chapter Four, Section I.N of the proposed regulations?

### **3. Section 3 - SEVERABILITY**

*If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.*

**Decision Point 4-2:** Shall the Commission approve the language set forth in Chapter Four, Section II of the proposed regulations?

### **CLEAN-UP LANGUAGE FOR EXISTING REGULATIONS**

If the Commission adopts the proposed Sunshine Regulations, it should also amend the existing Enforcement Regulations, which will continue to apply to all enforcement matters that do not involve allegations of Sunshine violations. The proposed amendments would: a) clarify that all complaints alleging a violation of the Sunshine Ordinance will be governed by the new Sunshine enforcement regulations; b) delete references in the existing Regulations to violations of the Sunshine Ordinance; and c) amend the definition of “business day” by adding the language “or a day on which the Commission office is closed for business” to conform with the definition in the proposed Sunshine regulations.

**Decision Point 5-1:** Shall the Commission approve the addition of Section III.D. as set forth on page 3 of the current Regulations?

**Decision Point 5-2:** If the answer to Decision Point 5-1 is yes, shall the Commission approve the deletion of other references to the Sunshine Ordinance in the current Regulations? (*See strikethrough language in Attachment B, pages 2, 7, 15, and 16.*)

**Decision Point 5-3:** Shall the Commission approve the amended definition of “business day” of Section II.A. on page 1 of the current Regulations?

**Decision Point 6:** Shall the Commission approve the regulations to handle violations of the San Francisco Sunshine Ordinance in its entirety as proposed or amended by the Commission at its September 24, 2012 meeting?



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Ethics Commission



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## ETHICS COMMISSION REGULATIONS FOR COMPLAINTS ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE

*Effective Date:* \_\_\_\_\_, 2012

**Decision Point 4-2:** Shall the Commission approve the language set forth in Chapter Four, Section II of the proposed regulations?

#### **CLEAN-UP LANGUAGE FOR EXISTING REGULATIONS**

If the Commission adopts the proposed Sunshine Regulations, it should also amend the existing Enforcement Regulations, which will continue to apply to all enforcement matters that do not involve allegations of Sunshine violations. The proposed amendments would: a) clarify that all complaints alleging a violation of the Sunshine Ordinance will be governed by the new Sunshine enforcement regulations; b) delete references in the existing Regulations to violations of the Sunshine Ordinance; and c) amend the definition of “business day” by adding the language “or a day on which the Commission office is closed for business” to conform with the definition in the proposed Sunshine regulations.

**Decision Point 5-1:** Shall the Commission approve the addition of Section III.D. as set forth on page 3 of the current Regulations?

**Decision Point 5-2:** If the answer to Decision Point 5-1 is yes, shall the Commission approve the deletion of other references to the Sunshine Ordinance in the current Regulations? (*See strikethrough language in Attachment B, pages 2, 7, 15, and 16.*)

**Decision Point 5-3:** Shall the Commission approve the amended definition of “business day” of Section II.A. on page 1 of the current Regulations?

**Decision Point 6:** Shall the Commission approve the regulations to handle violations of the San Francisco Sunshine Ordinance in its entirety as proposed or amended by the Commission at its September 24, 2012 meeting?



## ETHICS COMMISSION REGULATIONS FOR COMPLAINTS ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE

*Effective Date:* \_\_\_\_\_, 2012

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## **CHAPTER ONE**

### **I. PREAMBLE**

Pursuant to San Francisco Charter section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, S.F. Admin. Code §§ 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

### **II. DEFINITIONS**

For purposes of these Regulations, the following definitions shall apply:

- A. "Brown Act" means California Government Code sections 54950-54963.
- B. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- C. "California Public Records Act" means California Government Code section 6250, et seq.
- D. "City" means the City and County of San Francisco.
- E. "City officer" means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.
- F. "Commission" means the Ethics Commission.
- G. "Complaint" means a Task Force referral, or a written document submitted directly to the Ethics Commission, or a matter initiated by Ethics Commission staff, alleging a violation of the Sunshine Ordinance.
- H. "Complainant" means a person or entity that filed the original complaint alleging a violation of the Sunshine Ordinance. "Complainant" shall also mean the Commission if the complaint was initiated by the Commission staff.
- I. "Custodian" means a City officer or employee having custody of any public record.
- J. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.

K. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson, designated Commissioner or hearing officer may order that the delivery of briefs or other materials be accomplished by e-mail.

L. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

M. "Exculpatory information" means information tending to show that the Respondent is not guilty of the alleged violation(s).

N. "Mitigating information" means information tending to excuse or reduce the culpability of the Respondent's conduct.

L. "Order of Determination" means 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.

O. "Public Records" means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

P. "Referral" means a written document from the Task Force to the Commission initiating an Ethics Commission complaint.

Q. "Respondent" means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.

R. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.

S. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

T. "Willful violation" means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

## CHAPTER TWO

### I. REFERRALS FROM THE SUNSHINE ORDINANCE TASK FORCE ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE MADE BY ANY CITY OFFICER OR CITY EMPLOYEE OTHER THAN AN ELECTED OFFICIAL OR DEPARTMENT HEAD.

#### **A. Filing Complaints.**

1. Pursuant to Sunshine Ordinance section 67.30(c), the Task Force shall make referrals whenever it concludes that any City officer or employee has violated any provision of the Sunshine Ordinance.
2. Under this Chapter, the Ethics Commission will conduct a show cause hearing on any referral from the Task Force alleging (a) non-willful violations by City officers and employees, (b) willful violations by City officers, other than elected officials and department heads, and City employees, or (c) non-willful violations by elected officials and department heads.

**B. Scheduling of Show Cause Hearing.** After receipt of a Task Force referral, the Commission shall schedule a Show Cause hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

### II. SHOW CAUSE HEARING

**A. Public Hearing.** The Show Cause hearing shall be open to the public. The Commission may hold the hearing, or the Commission may assign one of its members or a hearing officer to hold the hearing.

**B. Standard of Proof.** The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.

**C. Role of the Executive Director.** The Executive Director shall have no prosecutorial or adjudicative role at the Show Cause hearing.

**D. Hearing Procedure.** Each Respondent and Complainant may speak on his or her own behalf, subject to a time limit determined by the Commission Chairperson, the Commission member assigned to hold the hearing, or the hearing officer. Alternatively, each Respondent or Complainant may designate a representative to address the Commission on his or her behalf. The Complainant's representative may be a current member of the Task Force. At his or her discretion, the Commission Chairperson, the Commission member assigned to hold the hearing, or the hearing officer may allow additional testimony.



Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

#### **E. Deliberations and Findings.**

The Commission shall deliberate the merits of the allegations in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that based on a preponderance of the evidence, a person of ordinary caution and prudence would conclude that the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:

- (a) whether the Respondent complied with all aspects of the Sunshine Ordinance, but failed to comply within the appropriate time-frame;
- (b) the volume of records requested, and the extent to which they were practically accessible;
- (c) whether the Respondent relied in good faith on an exception provided for by the Sunshine Ordinance in committing the alleged Sunshine Ordinance violation; and
- (d) whether the Respondent consulted with City counsel or relied on the advice of another City officer or City employee prior to committing the alleged violation.

#### **F. Administrative Orders and Penalties; Warning Letters.**

1. If the Commission agrees with the Task Force that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders and penalties requiring any or all of the following:

(a) the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or

(b) the Respondent's department, commission, or board to pay a monetary penalty to the General Fund of the City of up to five thousand dollars (\$5,000) for each violation; and/or

(c) the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or

(d) the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.

After issuing an order and penalties or instructing the Executive Director to issue a warning letter or upon a finding of no violation, the Commission shall take no further action on the complaint.

2. When deciding penalties, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:

(a) the severity of the violation;

(b) the presence or absence of any intention to conceal, deceive, or mislead;

(c) whether the violation was an isolated incident or part of a pattern; and

(d) whether the Ethics Commission previously found that the Respondent violated the Sunshine Ordinance.

#### **G. Public Announcement.**

Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission shall publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.

### CHAPTER THREE

**1. REFERRALS FROM THE TASK FORCE ALLEGING WILLFUL VIOLATIONS OF THE SUNSHINE ORDINANCE BY ELECTED OFFICIALS OR DEPARTMENT HEADS OR COMPLAINTS FILED DIRECTLY WITH THE ETHICS COMMISSION ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE.**

**A. Filing Complaints.**

1. Pursuant to Sunshine Ordinance section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.
2. Pursuant to Sunshine Ordinance section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order, made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply under this Chapter.
3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance by any City officer or City employee.
4. This Chapter will govern (a) referrals from the Task Force alleging willful violations of the Sunshine Ordinance by an elected official or department head, and (b) complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or City employee.
5. Any referral from the Task Force that does not allege a willful violation of the Sunshine Ordinance by an elected official or department head shall be handled pursuant to Chapter Two of these regulations.

**B. Scheduling of Hearing.**

1. When the Executive Director receives a Task Force referral alleging a willful violation of the Sunshine Ordinance by an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall schedule a public hearing at a regular meeting of the Commission at least 15 business days after the conclusion of his or her investigation.
2. At least 15 business days in advance of the hearing date, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.

3. In the case of a Task Force referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the Task Force.

## **II. INVESTIGATION AND RECOMMENDATION**

### **A. Factual Investigation.**

Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.

### **B. Subpoenas.**

During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

### **C. Report and Recommendation.**

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation, including any exculpatory or mitigating information. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.

2. The report shall recommend one of the following: a) that Respondent(s) willfully violated the Sunshine Ordinance; b) that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or c) that Respondent(s) did not violate the Sunshine Ordinance. The report and recommendation shall be delivered to the Commission, Complainant and Respondent pursuant Chapter Three, section I.B.2.

#### **D. Response to the Report and Recommendation.**

1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.
2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.

### **III. PUBLIC HEARING.**

#### **A. General Rules and Procedures.**

1. Public Hearing. The hearing shall be open to the public. The Commission may hold the hearing, or the Commission may assign one of its members or a hearing officer to hold the hearing.

Each Complainant and Respondent may speak on his or her behalf, subject to a time limit determined by the Commission Chairperson, the Commission member assigned to hold the hearing, or the hearing officer. Each Respondent or Complainant may designate a representative to address the Commission on his or her behalf. The Complainant's representative may be one sitting member of the Task Force. At his or her discretion, the Commission Chairperson, the Commission member assigned to hold the hearing, or the hearing officer may allow additional testimony. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

2. Standard of Proof. The Commission shall make the determination that a violation of the Sunshine Ordinance occurred only if a person of ordinary caution and prudence would so conclude, based on a preponderance of the evidence.
3. Role of the Executive Director. Except when a complaint is staff-initiated or initiated pursuant to section 67.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.

## **B. Deliberations and Findings.**

The Commission shall deliberate the merits of the allegations in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

To determine whether a violation of the Sunshine Ordinance is willful, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:

- (a) whether the Respondent complied with all aspects of the Sunshine Ordinance, but failed to comply within the appropriate time-frame;
- (b) the volume of records requested, and the extent to which they were practically accessible;
- (c) whether the Respondent relied in good faith on an exception provided for by the Sunshine Ordinance in committing the alleged Sunshine Ordinance violation; and
- (d) whether the Respondent consulted with counsel or relied on the advice of another City officer or City employee prior to committing the alleged violation.

## **C. Administrative Orders and Penalties.**

1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority. In addition, the Commission may issue orders and penalties requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance.

- (a) the Respondent to cease and desist the violation and/or produce the public record(s); and/or
- (b) the Respondent's department, commission, or board to pay a monetary penalty to the General Fund of the City of up to five thousand dollars (\$5,000) for each violation; and/or

(c) the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent willfully violated the Sunshine Ordinance; and/or

(d) the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.

2. When deciding penalties, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:

(a) the severity of the violation;

(b) the presence or absence of any intention to conceal, deceive, or mislead;

(c) whether the violation was an isolated incident or part of a pattern; and

(d) whether the Ethics Commission previously found that the Respondent violated the Sunshine Ordinance.

3. If the Commission finds that a Respondent has violated the Sunshine Ordinance but has not committed a willful violation, the Commission may impose any of the administrative orders and penalties outlined in Chapter Two, section II.F of these regulations.

4. After issuing an order and penalties or instructing the Executive Director to issue a warning letter, the Commission shall take no further action on the complaint.

#### **D. Finding of No Violation.**

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission shall take no further action on the complaint.



## **CHAPTER FOUR**

### **I. MISCELLANEOUS PROVISIONS**

#### **A. Ex Parte Communications.**

Once a complaint is filed with the Commission or referred by the Task Force, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of an enforcement action with the Commission's staff, the Respondent, the Complainant, any member of the Task Force, any member of the public, or any person communicating on behalf of the Respondent, Complainant, or any member of the Task Force, except for communications, such as scheduling matters, generally committed between a court and a party appearing before that court.

#### **B. Access to Complaints and Related Documents and Deliberations.**

Complaints, investigative files and information contained therein shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

#### **C. Oaths and Affirmations.**

The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.

#### **D. Selection of Designee by the Executive Director.**

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.

#### **E. Powers and Duties of Individual Commissioners and Hearing Officers.**

1. Unless otherwise provided, whenever the Commission assigns an individual Commissioner or hearing officer to hear any matter under these Regulations, the assigned Commissioner or hearing officer shall have the same authority, and be subject to the same restrictions, as the Commission.
2. When the Commission sits as the hearing panel to hear a case, with an outside hearing officer presiding, the hearing officer shall rule on procedural matters and on the

admission and exclusion of evidence only, and shall have no role in the decision on the merits.

**F. Extensions of Time and Continuances.**

Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson or the individual Commissioner or hearing officer assigned to hold the hearing, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chairperson or the individual Commissioner or hearing officer assigned to hold the hearing shall have the discretion to consider untimely requests.

The Commission Chairperson or the individual Commissioner or hearing officer assigned to hold the hearing shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson or the individual Commissioner or hearing officer assigned to hold the hearing may grant the request upon a showing of good cause.

The Commission or Commission Chairperson or the individual Commissioner or hearing officer may reschedule a hearing in their discretion for good cause.

**G. Recordings.**

Every hearing shall be electronically recorded and televised on SFGovTV. The Ethics Commission shall not be required to televise the portions of its meetings that are held in closed session or otherwise required to be confidential.

**H. Statute of Limitations.**

No action alleging a violation of the Sunshine Ordinance by an elected official, department head, City officer, or City employee shall be commenced more than one year after the date on which the original public records request was made, or the date on which the public meeting was held for allegations of public meeting violations. The date on which the complaint is received by the Ethics Commission shall constitute the commencement of the action. If the complaint is initiated by staff, the date on which the Executive Director delivers his or her report and recommendation regarding an alleged willful violation of the Sunshine Ordinance to the Ethics Commission, as required by these Regulations, shall constitute the commencement of the action.

**I. Place of Delivery.**

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these Regulations require delivery to a Respondent, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent.

3. Delivery is effective upon the date of delivery, not the date of receipt.

4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

**J. Page Limitations and Format Requirements.**

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

**K. Conclusion of Hearing.**

For the purposes of these Regulations, a hearing concludes on the last date on which the Commission hears argument or testimony in the proceeding.

**L. Proceedings under City Charter section 15.105.**

If the Commission holds a hearing pursuant to Charter section 15.105 and one or more of the charges relates to a finding or findings the Commission made under Chapter Three of these Regulations, the Commission shall handle that finding or findings in an expedited manner.

**M. Complaints alleging Sunshine Violations against the Ethics Commission.**

Any complaint alleging any violation of the Sunshine Ordinance against the Executive Director, any individual Ethics Commissioner, or any Ethics Commission staff member shall not be handled by the Ethics Commission. Upon the receipt of any such complaint, the Executive Director shall use his or her best efforts to refer the complaint to another California municipality to handle the complaint.

**N. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.**

If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged

violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.

## **II. SEVERABILITY**

If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

## ATTACHMENT B

San Francisco  
Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
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# ETHICS COMMISSION REGULATIONS FOR INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS

*Effective Date: July 5, 1997*

*Includes technical amendments effective April 13, 2002;*

*Streamlined Process for Complaints Alleging a Failure to File Campaign Finance Disclosure*

*Reports effective August 15, 2004; amendments effective October 10, 2005;*

*amendments effective March 10, 2006; amendments effective November 10, 2006; amendments effective December 18, 2009; and amendments effective January 8, 2010*

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## I. PREAMBLE

These Regulations of the San Francisco Ethics Commission are promulgated in order to ensure the fair, just, and timely resolution of complaints presented to the Commission that allege violations of laws within the Commission's jurisdiction by:

1. Setting and maintaining objective standards for the investigation and prosecution of matters brought before the Commission;
2. Eliminating any political or improper influence in the investigation and prosecution of persons accused of ethics violations;
3. Protecting the privacy rights of those accused of ethics violations by maintaining the confidentiality of complaints filed with, and investigations conducted by, the Commission;
4. Setting and enforcing reasonable time limits within which enforcement proceedings should be completed;
5. Coordinating and sharing with other governmental agencies the responsibility for investigations and prosecutions of complaints, whenever consistent with the interests of justice;
6. Delegating to the Commission staff maximum discretion in the handling and resolution of complaints at staff level, while retaining oversight of those staff activities.

## II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

- A. "Business day" means any day other than a Saturday, Sunday, ~~or~~ City holiday, or a day on which the Commission office is closed for business.
- B. "City" means the City and County of San Francisco
- C. "Commission" means the Ethics Commission.
- D. "Complainant" means a person or entity that makes a complaint.
- E. "Credible" means offering reasonable grounds for being believed.
- F. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next working day.



G. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity or to an agent authorized to accept delivery on behalf of the person or entity. For purposes of these Regulations, delivery may be made by leaving copies of the material with a responsible person at either the residence or place of business of the person or entity to whom the material is directed. The Commission, the Executive Director or a respondent receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, following a determination of probable cause, the Commission Chair or designated Commissioner or hearing officer may order that delivery of briefs or other materials be accomplished by e-mail.

H. "Enforcement action" means an action pursuant to San Francisco Charter section C3.699-13.

I. "Exculpatory information" means information tending to show that the respondent is not guilty of the alleged violations.

J. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

K. "Mitigating information" means information tending to excuse or reduce the significance of the respondent's conduct.

L. "Probable cause" means that based on the evidence presented there is reason to believe that the respondent committed a violation of law.

M. "Respondent" means a person or entity that is alleged in a complaint to have committed a violation of law.

N. "Stipulated order" means an order regarding a complaint the terms of which have been agreed to by both the Executive Director and the respondent.

O. "Violation of law" means a violation of City laws relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics, and State laws relating to campaign finance, conflicts of interest, or governmental ethics, including, but not limited to: San Francisco Charter section 15.100 et seq. and Appendix C (ethics); the San Francisco Campaign and Governmental Conduct Code; ~~the San Francisco Sunshine Ordinance, S.F. Administrative Code Ch. 67;~~ the Political Reform Act of 1974, Government Code section 81000 et seq.; Government Code section 1090 et seq.; and Government Code section 3201, et seq.

### **III. COMPLAINTS**

#### **A. Formal Complaints.**

1. Any person or entity may file a formal complaint alleging a violation of law. Formal complaints must be made in writing on a form specifically provided by the

Commission staff. Formal complaints must include the following information, upon the complainant's information and belief:

- (a) the name and address of the respondent;
- (b) the provision(s) of law allegedly violated;
- (c) the facts constituting the alleged violation(s);
- (d) the names and addresses of witnesses, if any; and
- (e) identification of documents or other evidence which may prove the facts constituting the alleged violation(s), if any.

2. Formal complaints may be filed anonymously. Any formal complaint not filed anonymously must be verified and signed by the complainant under penalty of perjury. If the complainant is an entity, the complaint must be verified and signed under penalty of perjury by an authorized officer or agent of the entity.

3. The Executive Director shall process and review all formal complaints following the process described in Section IV.

**B. Informal Complaints.** Any person or entity may file an informal complaint alleging a violation of law by submitting a complaint by telephone, in person, or in writing other than on the form prescribed by the Commission. The Executive Director shall have no obligation but has the discretion to process and review informal complaints.

**C. Complaints Initiated by the Executive Director.** The Executive Director may initiate complaints. These complaints need not conform to the requirements for formal complaints specified in subsection A of this Section.

**D. Complaints Alleging a Violation of the Sunshine Ordinance.** *Any complaint that alleges a violation of the San Francisco Sunshine Ordinance shall be governed by the Ethics Commission Regulations for Complaints Alleging Violations of Sunshine Ordinance.*

#### **IV. REVIEW OF COMPLAINTS**

**A. Preliminary Review.** The Executive Director must conduct a preliminary review of each formal complaint. This inquiry may include reviewing relevant documents, communicating with the complainant, communicating with the respondent, and any other inquiry to determine whether a full investigation is warranted.

**B. Dismissal of Complaint.** Based on the allegations and information contained in a complaint, and the Executive Director's preliminary review, the Executive Director may dismiss the complaint if the allegations do not warrant further action for reasons that may include, but are not limited to:

1. Credible evidence clearly refutes the allegations.
2. The allegations, if true, do not constitute a violation of law within the Commission's jurisdiction.
3. The complaint contains an expression of opinions, rather than specific allegations.
4. The allegations contained in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.

If the Executive Director dismisses a complaint under this section, the Executive Director shall take no further action on the complaint, except that he or she may: 1) inform the complainant of the Executive Director's decision; 2) at his or her discretion, issue a warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

The Executive Director shall provide a monthly summary to the Commission of each complaint dismissed, including the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

**C. There is Reason to Believe a Violation May Have Occurred.** If, based on the allegations and information contained in a complaint, and the Executive Director's preliminary review, the Executive Director determines that there is reason to believe that a violation of law may have occurred, the Executive Director shall immediately forward the complaint to the District Attorney and the City Attorney.

Within ten business days after receipt of the complaint, the District Attorney and City Attorney shall inform the Commission whether the District Attorney or City Attorney has initiated or intends to pursue an investigation of the complaint.

If neither the District Attorney nor City Attorney intends to pursue an investigation, the Executive Director shall, within 14 days of such notification, inform the complainant in writing of the action, if any, that he or she has taken or plans to take on the complaint, together with the reasons for such action or non-action. If the Executive Director has not informed the complainant of the action that he or she has taken or plans to take on the complaint within 14 days, the complainant shall be notified of the reasons for the delay and shall subsequently receive notification as provided above.

## **V. CONDUCT OF INVESTIGATIONS**

**A. Factual Investigation.** The Executive Director's investigation may include, but shall not be limited to, the interview of the respondent(s) and any witnesses, the deposition of respondent(s) and/or witnesses, and the review of documentary and other evidence.

**B. Subpoenas.** During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

**VI. DETERMINATION THAT THERE IS NOT PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED**

**A. Executive Director Determination and Calendaring.** If the Executive Director determines that there is not probable cause to believe that a violation of law has occurred, the Executive Director shall inform the Commission of that determination and provide clear and concise reasons supporting that determination. Thereafter any two or more members of the Commission may cause the item to be calendared for consideration by the full Commission in a closed session at the next Commission meeting held no sooner than ten days after the date the Executive Director informs the Commission of the Executive Director's determination. Commissioner's requests that a complaint be calendared for consideration by the full Commission must be received by the Executive Director not less than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

**B. Commission Decision Not to Dismiss.** If the matter is calendared for consideration by the Commission, and if the Commission decides that there is reason to believe that a violation of law may have occurred, the Commission shall direct the Executive Director either to investigate the matter further or to prepare a probable cause report and schedule a probable cause hearing.

**C. Commission Decision to Dismiss.** If the matter is calendared for consideration by the Commission, and if the Commission decides that there is not reason to believe that a violation of law may have occurred, the Commission shall take no further action on the complaint other than: 1) inform the complainant and respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

**D. Commission Decision Not to Calendar.** If the Executive Director determines that there is not probable cause to believe that a violation of law has occurred, and if after the Executive Director informs the Commission of the determination the Commission does not calendar the matter for consideration pursuant to section VI(A), the Executive Director shall take no further action except that he or she may: 1) inform the complainant and respondent of the Executive Director's decision; 2) at his or her discretion, issue a warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

**VII. RECOMMENDATION THAT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED**

**A. Probable Cause Report.** When the Executive Director determines there is probable cause to believe a violation of law has occurred, the Executive Director shall prepare a written “probable cause report” and schedule a probable cause hearing. The probable cause report shall contain a summary of the laws that the Executive Director believes the respondent(s) violated and evidence gathered through the investigation, including any exculpatory and mitigating information. In the probable cause report, the Executive Director may present statements including hearsay, declarations of investigators or others relating to the statements of witnesses, or the examination of physical evidence. Unless otherwise permitted by the Commission Chair or the Commission Chair’s designee for good cause shown, the probable cause report shall not exceed 25 pages excluding attachments.

**B. Delivery of Probable Cause Report and Notice of Probable Cause Hearing.** The Executive Director shall deliver to each respondent a copy of the probable cause report, with written notice of the date, time and location of the probable cause hearing, at least 45 days in advance of the hearing date. The notice shall inform each respondent that he or she has the right to be present and represented by counsel at the probable cause hearing.

**C. Response to the Probable Cause Report.**

1. Each respondent may submit a written response to the probable cause report. The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information. Unless otherwise permitted by the Commission Chair or the Commission Chair’s designee for good cause shown, the response shall not exceed 25 pages excluding attachments.

2. Each respondent who submits a response must deliver the response no later than 20 days prior to the date of the probable cause hearing. Unless the parties agree to deliver materials by email, the respondent must deliver a total of eight copies of the response to the Executive Director. The Executive Director must then immediately distribute copies of the response to the Commission. The respondent must also deliver one copy of the response to every other respondent named in the probable cause report.

**D. Rebuttal.** The Executive Director may submit evidence or argument in rebuttal to a response. If the Executive Director chooses to do so the Executive Director must deliver the rebuttal to the Commission and each respondent named in the probable cause report no later than seven days prior to the date of the probable cause hearing. Unless otherwise permitted by the Commission Chair or the Commission Chair’s designee for good cause shown, the rebuttal shall not exceed ten pages excluding attachments.

**VIII. PROBABLE CAUSE HEARING; DETERMINATION OF WHETHER AND HOW TO PROCEED WITH A HEARING ON THE MERITS**

**A. General Rules and Procedures.**

1. Unless otherwise decided by the Commission, the Commission shall sit as a hearing panel to conduct the probable cause hearing. The Commission may assign one of its members to conduct the probable cause hearing and submit a report and recommendation to the Commission.

2. ~~Except for hearings regarding alleged willful violations of the Sunshine Ordinance, the~~ hearing shall be closed to the public to the extent permitted by state law, unless the respondent requests that the probable cause hearing be held in public. ~~Probable cause hearings regarding alleged willful violations of the Sunshine Ordinance shall be held at a public meeting unless otherwise provided in state or local law.~~

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the probable cause hearing. Neither the Executive Director nor the respondent(s) may present live witness testimony at the probable cause hearing.

4. The Commission may find that there is probable cause to believe a violation of law has occurred only if a person of ordinary caution and prudence would conclude, based on the evidence, that there is a reasonable ground to suspect that the respondent has committed the violation.

#### **B. Probable Cause Determination.**

1. If the Commission as a whole conducts the probable cause hearing, the Commission shall make the probable cause determination no later than 45 days after the date the hearing is concluded. If the Commission assigns one of its members to conduct the probable cause hearing, the assigned member shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing concludes, and the Commission shall make the probable cause determination no later than 45 days after the assigned member delivers his or her report and recommendation.

2. A determination that there is probable cause to believe that a violation of law has occurred shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard or read the testimony (either in person or by listening to a tape or reading the transcript prepared by a court reporter) and reviewed the evidence, or otherwise reviewed the entire record.

3. The Commission shall not make a finding of probable cause if it is presented with clear and convincing evidence that, prior to the alleged violation:

(a) the respondent had requested and obtained a written opinion from the Commission;

(b) the respondent, in requesting the opinion, disclosed truthfully all the material facts pertinent to the case;

(c) the Commission or its staff issued a formal, written opinion with which both the District Attorney and City Attorney concurred; and

(d) the respondent committed the acts or violations alleged in the complaint in good-faith reliance upon the formal, written opinion of the Commission.

4. If the Commission determines that there is not probable cause to believe a violation has occurred, the Commission shall dismiss the complaint and take no further action on the complaint, except: 1) inform the complainant and each respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

5. If the Commission determines that there is probable cause to believe a violation of law has occurred, the Commission shall announce its determination in open session. The announcement shall contain a summary of the allegations for which the Commission determines there is probable cause to believe a violation of law has occurred and a cautionary statement that each respondent is presumed to be innocent unless and until such time that the allegations are proved in a subsequent hearing on the merits.

#### **C. Determination How to Proceed with Hearing on Merits.**

1. Following a determination of probable cause by the Commission, the Commission shall proceed with a hearing on the merits of the complaint. Unless otherwise decided by the Commission, the Commission shall sit as the hearing panel to hear the merits of the case. The Commission may also sit as the hearing panel to hear the case, with an outside hearing officer presiding, or designate an individual Commissioner or an outside hearing officer to hear the case and file a report and recommendation for decision by the Commission.

2. The Commission shall provide for resolution of preliminary matters in advance of the hearing on the merits. Unless otherwise decided by the Commission, the Commission Chair shall hear and decide preliminary matters pursuant to Section X, subsection B. The Commission alternatively may designate an individual Commissioner or an outside hearing officer to hear and decide preliminary matters.

3. The Commissioner or hearing officer assigned to decide preliminary matters shall also be authorized to provide for the issuance of subpoenas.

#### **D. Amending Probable Cause Determination.**

Before the Executive Director has scheduled the hearing on the merits, or no later than 60 days prior to the date the hearing on the merits is scheduled to commence, the Executive Director may request that the Commission amend the probable cause determination to add or amend allegations or charges against the respondent. If the Executive Director seeks to amend the probable cause determination, the Executive Director, the



respondent(s) and the Commission shall follow the procedures set forth in Sections VII and VIII, and the Executive Director shall issue an amended accusation and notice of the hearing on the merits following the procedures set forth in Section IX.

**IX. ISSUANCE OF ACCUSATION; SCHEDULING AND NOTICE OF HEARING ON MERITS**

**A. Issuance of Accusation.**

Except as provided in Section XI, following a determination of probable cause by the Commission, the Executive Director shall issue an accusation. The accusation shall clearly specify the provisions of the laws that each respondent allegedly violated and shall set forth the acts or omissions with which each respondent is charged. The accusation shall list only those charges for which the Commission made a determination of probable cause. The Executive Director shall deliver a copy of the accusation to each respondent ten days after the Commission's probable cause determination. The accusation is a public document.

The Executive Director shall present the case in support of the accusation at the hearing on the merits. The accusation shall be the charging document for the purpose of the hearing on the merits. The commission shall not find that any respondent has committed a violation of law if the accusation does not allege such a violation and provide the respondent notice of the basis for the allegation.

**B. Scheduling and Notice of Hearing on Merits.**

The Executive Director shall schedule the hearing on the merits, and deliver written notice of the date, time and location of the commencement of the hearing to each respondent at least 45 days prior to the commencement of the hearing. The notice shall be in substantially the following form:

"You are hereby notified that a hearing will be held before the Ethics Commission (or name of hearing officer or assigned Commissioner) at \_\_\_\_ on the \_\_\_\_ day of \_\_\_\_, 20\_\_, at the hour of \_\_\_\_, at (location of \_\_\_\_), upon the charges made in the accusation. You may be present at the hearing, may, but need not, be represented by counsel, may present any relevant evidence, and will be given an opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Commission on or before (date)."

**X. DISCOVERY; HEARING BRIEFS; PRELIMINARY MATTERS.**

**A. Discovery.** The Executive Director and each respondent shall be entitled to pre-hearing discovery in accordance with the provisions of California Administrative Procedure Act, Government Code, Title 2, Division 3, Part 1, Chapter 5, section 11500 et seq.

**B. Resolution of Preliminary and Procedural Matters.**

1. The Executive Director and any respondent may present preliminary matters, unrelated to the merits of the accusation, to the assigned Commissioner or hearing officer designated to hear such matters pursuant to Section VIII, subsection C(2). Preliminary matters may include, but are not limited to, the following:

- (a) procedural matters;
- (b) disqualification of any member of the Commission from participation in the hearing on the merits;
- (c) requests for dismissal of any charges in the accusation because, even if the allegations set forth in the accusation are true, those charges do not state a violation of law as alleged;
- (d) discovery motions; and
- (e) any other matters not related to the truth or falsity of the factual allegations in the accusation.

2. A request for resolution of preliminary matters must be delivered to the assigned Commissioner or hearing officer no later than 25 days prior to the commencement of a hearing on the merits. At the same time that the request is delivered to the assigned Commissioner or hearing officer, the requester must deliver copies of the request to the Executive Director and every other respondent named in the accusation.

3. The request for resolution of preliminary matters may contain legal arguments and a summary of the facts underlying the request. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the request shall not exceed 15 pages excluding attachments.

4. The Executive Director or each respondent may submit a written opposition to a request for resolution of preliminary matters. The opposition must be delivered to the assigned Commissioner or hearing officer no later than ten days after the date of delivery of the request. At the same time that the opposition is delivered to the assigned Commissioner or hearing officer, the party submitting the opposition must deliver copies of the opposition to the Executive Director and every other respondent named in the accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the opposition shall not exceed ten pages excluding attachments.

5. The requestor may submit a written reply to an opposition. The reply must be delivered to the assigned Commissioner or hearing officer no later than five days after the date of delivery of the opposition. At the same time that the reply is delivered to the assigned Commissioner or hearing officer, the party submitting the reply must deliver copies of the reply to the Executive Director and every other respondent named in the accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the reply shall not exceed five pages excluding attachments.

6. The assigned Commissioner or hearing officer shall issue a written decision on each request for resolution of preliminary matters no later than five days prior to the commencement of the hearing on the merits.

7. The Executive Director or any respondent may submit a written request for reconsideration, by the Commission, assigned Commissioner or hearing officer who will conduct the hearing on the merits, of any decision made on preliminary matters. A party requesting reconsideration shall deliver the request on the Commission, assigned Commissioner or hearing officer, and the Executive Director and any other respondent, no less than three days prior to the hearing on the merits.

8. Before or during the hearing on the merits, the Executive Director and any respondent may file a request for resolution of a procedural matter affecting the conduct of the hearing. This request shall be directed to the Commissioner or hearing officer designated to hear preliminary matters pursuant to Section VIII, subsection C(2). The request shall follow the process outlined by paragraphs 2 through 5 of this section, except that the request may be submitted later than 25 days prior to the commencement of the hearing on the merits but may not be submitted after the conclusion of the hearing on the merits. If either party requests a written decision, the assigned Commissioner or hearing officer shall issue a written decision no later than 20 days after the date of the request.

#### **C. Hearing Briefs.**

The Executive Director shall, and any respondent may, submit a hearing brief. The brief shall outline significant legal arguments and list evidence and witnesses to be presented at the hearing. The brief is not required to list anticipated rebuttal evidence or rebuttal witnesses. Unless the Commission or outside hearing officer agrees to accept briefs by email, six copies of the brief shall be delivered to the Commission, assigned Commissioner, or outside hearing officer no later than 20 days prior to the date the hearing on the merits commences. The Executive Director shall deliver a copy of the Executive Director's brief to each respondent named in the accusation. Each respondent who chooses to submit a brief shall deliver copies of the respondent's brief to the Executive Director and to every other respondent named in the accusation.

#### **D. Issuance of Hearing Subpoenas.**

The Executive Director and any respondent named in the accusation may request the issuance of subpoenas for the attendance of witnesses and for the production of documents at the hearing on the merits. Requests for the issuance of subpoenas should be delivered no later than 20 days prior to the commencement of the hearing on the merits. The request shall be accompanied by a declaration specifying the name and address of the witnesses and setting forth the materiality of their testimony. If the request is for a document subpoena, it shall be accompanied by a declaration which includes the following information: a specific description of the documents sought; an explanation of why the documents are necessary for the resolution of the complaint; and the name and address of the witness who has possession or control of the documents. Subpoenas may be issued upon approval of the Commission or the Commissioner or hearing officer designated by Section VIII, subsection C(2).

**XI. DISCOVERY OF EXCULPATORY INFORMATION AND  
DISMISSAL OF COMPLAINT PRIOR TO HEARING ON  
THE MERITS**

**A. Discovery of Exculpatory Information.** Following the delivery of the probable cause report, if the Executive Director is aware of or discovers any exculpatory information with respect to any charge listed in the accusation, the Executive Director shall notify the Commission and the respondent(s) of this information.

**B. Dismissal Recommendation.** After a determination of probable cause and before a hearing on the merits, the Executive Director may recommend that the Commission dismiss the complaint. The Executive Director may make such a recommendation based on the Executive Director's discovery of exculpatory information or other good cause. In such situations, if he or she has not done so already, the Executive Director is not required to issue an accusation and the Commission need not hold a hearing on the merits, unless the Commission overrides the Executive Director's dismissal recommendation.

**C. Commission Consideration of Dismissal Recommendation.** The Executive Director shall present the dismissal recommendation and the reasons for the recommendation to the Commission in a public memorandum. Thereafter, any two or more members of the Commission may cause the complaint to be calendared for consideration by the full Commission in open session at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the Executive Director's recommendation. A Commissioner's request that a complaint be calendared must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements. If two or more members of the Commission do not cause the complaint to be calendared, or if in open session a majority of the Commission does not vote to override the dismissal recommendation, the Commission shall take no further action on the complaint except: 1) inform the complainant and each respondent of the Commission's decision; 2) at the Commission's

discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for it appropriate action.

**D. Dismissal or Removal of Specific Charges.** After a determination of probable cause and before a hearing on the merits, the Executive Director may decide not to proceed with a specific charge listed in the accusation. If the Executive Director makes such a determination, the Executive Director shall immediately notify in writing the respondent(s) and the Commission or hearing officer. If the Executive Director provides such notice, the Commission shall not find a violation based on the specific charge or violation after a hearing on the merits.

## **XII. HEARING ON THE MERITS**

### **A. General Rules and Procedures.**

#### **1. Public Hearing**

The hearing on the merits shall be open to the public, provided that either the Executive Director or the respondent(s) may request that the Commission, assigned Commissioner or hearing officer exclude any witnesses.

#### **2. Standard of Proof**

The Commission may determine that a respondent has committed a violation of law only if a person of ordinary caution and prudence would conclude, based on a preponderance of the evidence, that the respondent has committed the violation.

#### **3. Rules of Evidence**

All evidence admissible in an administrative proceeding governed by the California Administrative Procedure Act shall be admissible in a hearing on the merits. The Executive Director and each respondent shall have the right to call and examine witnesses under oath or affirmation, to introduce exhibits, to cross-examine and impeach witnesses, and to rebut any evidence presented.

#### **4. Exhibits**

Where both parties stipulate to the admissibility of an exhibit, the parties shall so advise the Commission in advance of the hearing. For all other exhibits, each party may move to admit a particular exhibit at the hearing, and the other party shall have an opportunity to object prior to the ruling on the admission.

#### **5. Witnesses**

Witnesses shall be examined by the parties as follows: direct examination, cross-examination, re-direct. After the parties have concluded their examination of a witness, Commissioners shall have an opportunity to pose questions to the witness.

**6. Oral Argument**

At the hearing, the Executive Director and each respondent shall be allowed oral argument. The Commission, assigned Commissioner, or hearing officer shall determine the appropriate length for the arguments.

**B. Finding of Violation.**

If the Commission as a whole conducts the hearing on the merits, the Commission shall determine, no later than 45 days after the date the hearing is concluded, whether the respondent has committed a violation of law. If the Commission assigns one of its members or an outside hearing officer to conduct the hearing on the merits, the assigned member or hearing officer shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing is concluded. Thereafter, the Commission shall determine, no later than 45 days after the date the report and recommendation is delivered, whether the respondent has committed a violation of law.

The votes of at least three Commissioners are required to find a violation of law. The finding of a violation shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

**C. Administrative Orders and Penalties.**

1. The votes of at least three Commissioners are required to impose orders and penalties for a violation. The Commission may issue orders and penalties requiring the respondent(s) to:

- (a) cease and desist the violation;
- (b) file any reports, statements or other documents or information required by law; and/or
- (c) pay a monetary penalty to the general fund of the City in an amount permitted under the law that the Commission finds the respondent has violated, or, if the law does not specify the amount of the monetary penalty, in an amount up to five thousand dollars (\$5,000) for each violation, or three times the amount which the respondent failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

2. When deciding on an order and penalties, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:

- (a) the severity of the violation;
- (b) the presence or absence of any intention to conceal, deceive, or mislead;
- (c) whether the violation was deliberate, negligent or inadvertent;
- (d) whether the violation was an isolated incident or part of a pattern;
- (e) whether the respondent has a prior record of violations of law; and
- (f) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.

3. Unless otherwise ordered by the Commission, any penalties imposed by the Commission must be paid in full by the respondent within 90 days of the Commission's decision.

#### **D. Finding of No Violation.**

If the Commission determines that there is insufficient evidence to establish that the respondent has committed a violation, or if the Commission determines that there is sufficient evidence to establish that the respondent has not committed a violation, the Commission shall publicly announce this fact. Thereafter, the Commission shall take no further action on the complaint. The Executive Director shall inform each respondent and complainant of the Commission's determination.

### **XIII. MISCELLANEOUS PROVISIONS**

#### **A. Ex Parte Communications.**

Once a complaint is filed, no Commissioner or staff member shall engage in oral or written communications outside of a Commission meeting, interview or settlement conference regarding the merits of an enforcement action with the respondent or complainant or any person communicating on behalf of the respondent or complainant unless the communication is necessary for the conduct of the investigation or enforcement action.

#### **B. Access to Complaints and Related Documents and Deliberations.**

1. Except as described in subsection 3 for complaints alleging violations of the San Francisco Sunshine Ordinance, nNo complaint, response thereto, investigative file or information contained therein, or Commissioner and staff deliberations about complaints shall be disclosed except as necessary to the conduct of an investigation, prior to a probable cause determination.



2. After a determination of probable cause, the probable report, the response, and the rebuttal shall be confidential, unless the respondent requested that the probable cause hearing be public. All investigative documents, including notes and memoranda, created prior to the probable cause determination, such as the complaint, shall remain confidential, except that the Executive Director may provide a copy of the complaint to the respondent(s) if the Executive Director determines that disclosure is necessary to the conduct of the investigation. All investigative documents, including notes and memoranda, created by the Executive Director and his or her staff after the probable cause determination shall be confidential, except for the accusation, until any such documents are either delivered to the Commission or respondent(s), introduced as evidence or an exhibit, or distributed for public consumption, such as an agenda or press release.

~~3. For complaints alleging willful violations of the San Francisco Sunshine Ordinance (S.F. Administrative Code Ch. 67), no complaint, investigative file or information contained therein, or Commissioner or staff deliberations shall be disclosed except as necessary to the conduct of an investigation or as required by the California Public Records Act (Government Code section 6250, et seq.) or the San Francisco Sunshine Ordinance. Deliberations by the Commission regarding such a complaint shall be conducted at a public meeting. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff shall not be disclosed until after the dismissal of a complaint or the Commission has issued its final decision following the hearing on the merits.~~

43. In addition to the prohibition on ex parte communications stated in Section XIII, subsection A, except at a public meeting of the Commission, Commissioners are prohibited, prior to a final determination on the merits of a complaint, from engaging in oral or written communications regarding the merits of a complaint or enforcement action with any person or entity unless the communication is necessary for the conduct of the investigation or enforcement action. After a final determination on the merits of a complaint, Commissioners may discuss matters in the public record.

#### C. Oaths and Affirmations.

The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.

#### D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission of the designation no later than the next business day.

#### E. Powers and Duties of Hearing Officers.

1. Unless otherwise provided, whenever the Commission assigns an individual Commissioner or hearing officer to hear any matter under these Regulations, the assigned Commissioner or hearing officer shall have the same authority, and be subject to the same restrictions, as the Commission.
2. When an individual Commissioner or a hearing officer is assigned to hear and decide preliminary matters in advance of a hearing on the merits, he or she shall make an actual determination. This determination may be reviewed by the Commission upon request by the Executive Director or a respondent, pursuant to the procedures specified in Section X, subsection B(7).
3. When an individual Commissioner or a hearing officer is assigned to conduct a probable cause hearing or hearing on the merits, he or she shall submit a report and recommendation for decision by the Commission. The report and recommendation shall contain proposed findings of fact and conclusions of law. Copies of the report and recommendation shall be delivered to the Commission, Executive Director, and each respondent no later than 30 days after the date the hearing is concluded. Thereafter, the Executive Director shall calendar the matter for consideration at the next Commission meeting not less than 15 days after the date the report and recommendation is delivered to the Commission.
4. When the Commission sits as the hearing panel to hear a case, with an outside hearing officer presiding, the hearing officer shall rule on procedural matters and on the admission and exclusion of evidence only, and shall have no role in the decision on the merits.

#### **F. Statute of Limitations.**

1. Unless otherwise stated in local or State law, for statute of limitations purposes, an action or proceeding for administrative penalties is brought or commenced by the Executive Director on the date the Executive Director delivers the probable cause report.
2. If there is no statute of limitations for violations of the law allegedly violated, the probable cause report must be delivered within four years of the date of events which form the basis of the complaint, or the date that the events constituting the basis of the complaint were discovered by the Ethics Commission, whichever is later.

#### **G. Extensions of Time and Continuances.**

Whenever the Executive Director, a respondent, or a witness is required to complete an act or produce materials pursuant to these Regulations, that party may request an extension of time. Requests for extensions of time may be made to the Commission Chair or the Commission Chair's designee. The requester must deliver the request to the Commission Chair or designee and provide a copy of the request to all other parties no later than ten business days before the deadline to complete an act or produce materials.

The Commission Chair or designee shall have the discretion to consider untimely requests. The Commission Chair or designee shall approve or deny the request within five business days of the submission of the request. The Commission Chair or designee may grant the request only upon a showing of good cause.

The Executive Director or any respondent may request the continuance of a hearing date. The requester must deliver the request to the Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall have the discretion to consider untimely requests.

The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall approve or deny the request within five working days of the submission of the request. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing may grant the request only upon a showing of good cause.

#### **H. Referrals to Other Enforcement Agencies.**

At any time after the filing of a complaint, the Commission or Executive Director may refer the matter to another government agency or official if the Commission or Executive Director determines that the agency or official may more appropriately resolve the allegations in the complaint or enforce the applicable provisions of law. A copy of all information gathered by the Commission staff shall be sent to the agency or official together with the referral.

A determination by the Executive Director or the Commission that no further action should be taken on a matter shall not prevent any other government agency from initiating its own enforcement action, including disciplinary action, based on the same allegations and facts.

#### **I. Recordings and Transcripts.**

Every probable cause hearing and hearing on the merits shall be tape-recorded. Where the Commission assigns a Commissioner to conduct a probable cause hearing, and where the Commission assigns a Commissioner or hearing officer to conduct a hearing on the merits, the hearing shall also be recorded stenographically. The Commission shall retain the tapes until the opportunity for legal challenge has been exhausted. Copies of a tape shall be available to the respondent upon request.

#### **J. Place of Delivery.**

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these regulations require delivery to a respondent or his or her committee, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under section II, subsection F, to:

a. If the respondent is a City employee, to the address listed with the (Controller/ Payroll) as the employee's current address.

b. If the respondent is a former City employee, to the address listed with the City's retirement system.

c. If the respondent is a current or former candidate or committee registered with the Ethics Commission, to the address provided to the Ethics Commission by that candidate or committee.

d. If subsections (a) through (c) are not applicable, to an address reasonably calculated to give notice to and reach the respondent.

It is the responsibility of City employees, or candidates or committees who file reports with the Ethics Commission, to maintain accurate addresses with relevant City Departments. The Executive Director therefore may rely on those addresses in carrying out the objectives of the Commission.

3. Delivery is effective upon the date of delivery, not the date of receipt.

#### **K. Page Limitations and Format Requirements.**

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

#### **L. Public Summary of Dismissed Complaints.**

Notwithstanding any other provision of these regulations, the Executive Director may provide a public summary of dismissed complaints. Such summary may include, but need not be limited to, a generic description of each dismissed complaint and a summary of the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

#### **M. Conclusion of Hearing on the Merits.**

For the purposes of these Regulations, a hearing on the merits concludes on the last date on which the Commission hears argument or testimony in the proceeding.

#### **XIV. STIPULATED ORDERS**

A. At any time after the Commission takes jurisdiction over a complaint, the Executive Director may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulation, decision and order. Any proposed stipulation, decision and order shall explicitly state that:

- (1) the proposed stipulation, decision and order is subject to approval by the Commission;
- (2) the respondent knowingly and voluntarily waives any and all procedural rights under the law and these Regulations;
- (3) the respondent understands and acknowledges that the stipulation is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
- (4) the respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and
- (5) in the event the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.

B. The stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority pursuant to Charter section C3.699-13.

C. Once the Executive Director enters into a stipulated agreement with a respondent, the Executive Director shall inform the Commission of this stipulation. Thereafter, any two or more members of the Commission may cause the stipulation to be calendared for consideration by the full Commission in a closed session at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the stipulated agreement. If there is a vacancy on the Commission or if a member must recuse himself or herself from consideration of the stipulated order, one member of the Commission may cause the stipulation to be calendared. Commissioners' requests that a stipulated agreement be calendared for consideration by the full Commission must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

D. Stipulated orders must be approved by the Commission and, upon approval, must be announced publicly. The stipulated order shall have the full force of an order of the Commission.

#### **XV. SEVERABILITY**

If any provision of these Regulations, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

AMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Mayor Edwin M. Lee  
Mayor's Office  
City Hall, Room 200  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

September 24, 2012

Dear Mayor Lee:

On July 18, 2011, the Ethics Commission sent you a letter regarding Library Commission President, Jewelle Gomez. The letter stated that on July 11, 2011, the Ethics Commission calendared a Sunshine Ordinance Task Force referral for discussion at its regularly scheduled meeting regarding an alleged public meeting violation by Ms. Gomez.

After publicly discussing the matter, the Ethics Commission determined that Ms. Gomez, willfully violated the public testimony requirements of Sunshine Ordinance section 67.15 when she shouted down a member of the public and prevented her from addressing the Library Commission during public comment. The Ethics Commission also determined that Ms. Gomez's actions fell below the standards appropriate for a public official. However, because the Sunshine Ordinance did not provide the Ethics Commission with an ability to impose specific penalties against an appointed official such as Ms. Gomez for a violation of the Ordinance, the Commission voted to recommend that you consider taking steps to remove Ms. Gomez from her appointed office for her conduct.

The Ethics Commission has not received a response from your office as to any action you may have taken regarding Ms. Gomez. Thus, I am writing to request that you advise the Commission as to what action you have taken, or will take, if any, in connection with this matter.

Sincerely,

Benedict Y. Hur, Esq.  
Chairperson

Cc: San Francisco Sunshine Ordinance Task Force Chairperson  
Jewelle Gomez, Library Commission President



## *Memorandum*

**TO:** SAN FRANCISCO  
ETHICS COMMISSION

**FROM:** LISA HERRICK  
Sr. Deputy City Attorney

**SUBJECT:** Referral from Sunshine  
Ordinance Task Force re  
Ethics Complaint No. 08-110816

**DATE:** September 6, 2012

### **INTRODUCTION**

The San Francisco Sunshine Ordinance Task Force ("Sunshine Task Force") referred Ethics Complaint No. 08-110816 to the Ethics Commission finding violations of the San Francisco Sunshine Ordinance against, among others, the Executive Director of the Ethics Commission. Because the Executive Director of the Ethics Commission is named as a respondent in the Complaint, I have been asked to review and investigate the Complaint consistent with the Ethics Commission Regulations for Investigations and Enforcement Proceedings.<sup>1</sup>

### **SUMMARY OF COMPLAINT**

On March 6, 2011, Patrick Monette-Shaw filed a complaint with the Sunshine Task Force alleging that the San Francisco Controller and Ethics Commission violated Sections 67.24<sup>2</sup>, 67.26<sup>3</sup> and 67.34<sup>4</sup> of the Sunshine Ordinance by failing to provide records in response to an Immediate Disclosure Request for "any and all written correspondence between the City Controller's Office and the Ethics Commission related to the Whistleblower Complaint filed by Drs. Derek Kerr and Maria Rivero regarding the Laguna Honda Hospital Patient Gift Fund during the period of February 1, 2010 and December 31, 2010."

### **PROCEEDINGS BEFORE SUNSHINE ORDINANCE TASK FORCE**

The Sunshine Task Force heard this matter on April 26, 2011.

In an Order of Determination dated June 14, 2011, the Task Force found that the Controller's Office violated Section 67.25<sup>5</sup> of the Sunshine Ordinance for untimely response to the Immediate Disclosure Request. The Task Force also found that the Ethics Commission and Controller's Office each violated Section 67.26 of the Sunshine Ordinance by not keeping withholding to a minimum and Section 67.27<sup>6</sup> of the Sunshine Ordinance for failing to justify the withholding. The Task Force ordered the Controller's Office and Ethics Commission to release the records requested within 5 business days and appear before the Compliance and Amendments Committee on July 12, 2011.

On July 12, 2011, the Compliance and Amendments Committee of the Task Force recommended that the Task Force find that Controller's Office staff and Ethics Commission staff violated Sunshine Ordinance Section 67.34 for willful failure to disclose the records requested.

On July 26, 2011, the Task Force adopted the recommendation of the Compliance and Amendments Committee to find Controller's Office staff and Ethics Commission staff in willful violation of the Order of Determination pursuant to Section 67.34 of the Sunshine Ordinance and San Francisco City Charter Section 15.105(e).<sup>7</sup> The Task Force also voted to forward the matter to the District Attorney and the Ethics Commission for enforcement and forward a copy of the referral letter to Mayor Ed Lee and the San Francisco Civil Grand Jury.

On August 15, 2011, the Task Force referred its Order of Determination issued June 14, 2011 to the Ethics Commission pursuant to Sunshine Ordinance Sections 67.21<sup>8</sup> and 67.30.<sup>9</sup> The Task Force's August 15 letter also provided notification of willful failure and official misconduct findings against Controller's Office staff and Ethics Commission staff for failure to comply with the June 14 Order of Determination.

#### **REFERRALS TO OTHER AGENCIES**

On August 25, 2011, Garrett Chatfield, Investigator with the Ethics Commission, referred the Task Force's Order of Determination to Andrew Shen, Deputy City Attorney, San Francisco City Attorney's Office and Marc Katz, Assistant District Attorney, San Francisco District Attorney's Office.

On August 31, 2011, Marc Katz informed Mr. Chatfield:

At this time, our office is not pursuing a criminal investigation concerning this complaint. Your letter notes that the Ethics Commission is "in discussions with various outside agencies to determine if the matter ... can be referred to another agency." Please provide us with the contact information for the person/agency that will handle the investigation. We will ask that agency to inform us if they uncover evidence of criminal conduct.

On September 8, 2011, Mr. Shen wrote to John St. Croix, Executive Director of the Ethics Commission, to inform him that the City Attorney's Office would not investigate Complaint No. 08-110816.

#### **REVIEW OF THE RECORD**

I reviewed the entire file in this matter, including the Complaint and all memoranda and correspondence related to the proceedings before the Sunshine Task Force. I determined that it was not necessary for me to conduct additional interviews.

## LEGAL ANALYSIS

### A. Records from the Controller's Office

San Francisco City Charter Section F1.110(b) provides:

Notwithstanding any other provision of this Charter, or any ordinance or regulation of the City and County of San Francisco, and except to the extent required by state or federal law, all drafts, notes, preliminary reports of Controller's benchmark studies, audits, investigations and other reports shall be confidential.

In addition, Section F1.107(c) of the Charter requires in part:

The Board of Supervisors shall enact and maintain an ordinance protecting the confidentiality of whistleblowers, and protecting City officers and employees from retaliation for filing a complaint with, or providing information to, the Controller, Ethics Commission, District Attorney, City Attorney or a City department or commission about improper government activity by City officers and employees.

The Charter therefore makes all drafts, notes and preliminary reports of the Controller's investigations confidential unless required to be disclosed under state or federal law; the identity of whistleblowers is also confidential under the Charter as well as Section 4.123(a) of the San Francisco Campaign and Governmental Conduct Code which implements the Charter provision.<sup>10</sup>

No federal law exists that requires records related to whistleblower complaints and investigations to be disclosed. Moreover, California Government Code Section 53087.6<sup>11</sup> makes records of an investigative audit confidential and the California Public Records Act exempts disclosure of records exempted or prohibited pursuant to state law.<sup>12</sup> Finally, although Drs. Kerr and Rivero apparently submitted a "Waiver of Confidentiality Request for our LHH Gift Fund Whistleblower Complaints", the conduct of investigative audits is governed by the City's Charter and state law.

Since there is no federal or state law that would compel disclosure of whistleblower information and the Sunshine Ordinance is specifically preempted by the City's Charter, the information requested by Mr. Monette-Shaw cannot be disclosed.

### B. Records from the Ethics Commission

Appendix C3.699-13(a) of the San Francisco City Charter provides in part:

If the commission, upon the sworn complaint or on its own initiative, determines that there is sufficient cause to conduct an investigation, it shall investigate alleged violations of this charter or City ordinances relating to campaign finance, lobbying, conflicts of interest and governmental ethics.... The investigation shall

be conducted in a confidential manner. Records of any investigation shall be considered confidential information to the extent permitted by state law. Any member or employee of the commission or other person who, prior to a determination concerning probable cause, discloses information about any preliminary investigation, except as necessary to conduct the investigation, shall be deemed guilty of official misconduct. The unauthorized release of confidential information shall be sufficient grounds for the termination of the employee or removal of the commissioner responsible for such release.

Sections 6276<sup>13</sup> and 6276.32<sup>14</sup> of the California Public Records Act exempt from disclosure "official information." California Evidence Code 1040 defines "official information" as follows:

(a) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

The City may refuse to disclose information acquired in confidence by a public employee. As discussed above, although Drs. Kerr and Rivero apparently submitted a "Waiver of Confidentiality Request for our LHH Gift Fund Whistleblower Complaints", the conduct of investigative audits is governed by the City's Charter and state law and so neither physician is authorized to waive the privilege.

The City's Charter deems confidential records of investigations by the Ethics Commission to the extent provided by state law. Since state law protects "official information" and the Sunshine Ordinance is preempted by the City's Charter, the information requested by Mr. Monette-Shaw cannot be disclosed.

## **RECOMMENDATION**

For the reasons explained above, the Sunshine Ordinance Task Force did not apply the law correctly. I recommend that the Commission dismiss Complaint 08-110816, in which the Sunshine Task Force found violations of Sections 67.25 67.26, 67.27 and 67.34 of the Sunshine Ordinance.

Please note that one member of the Commission may cause this Complaint to be calendared for consideration by the full Commission in an open session at the next Commission meeting, which is scheduled for September 24, 2012.<sup>15</sup> A request for consideration by the full Commission must be received by staff to the Ethics Commission by Wednesday, September 19, 2012 (no fewer than five days before the date of the Commission meeting) so that staff may comply with the applicable notice and agenda requirements.<sup>16</sup>

RICHARD DOYLE  
City Attorney

By:   
LISA HERRICK  
Sr. Deputy City Attorney

For questions, please contact Lisa Herrick, Sr. Deputy City Attorney, at 408-535-1900.

<sup>1</sup> I am a Senior Deputy City Attorney for the San Jose Office of the City Attorney. One of my first assignments when I joined the City Attorney's Office in August 2006 was to staff the Sunshine Reform Task Force, which met for two years. Over that period, the Task Force made a number of recommendations about increasing transparency in meetings and access to documents in San Jose.

I also advise City officials and employees on the Brown Act, California Public Records Act, Political Reform Act and the City's ethics ordinances.

I advise the City Clerk on all matters related to the Clerk's Office, including elections. I also staff the Elections Commission. I have handled litigation matters involving the City's Campaign Finance and Lobbying ordinances.

Before joining the City Attorney's Office, I worked for the County of Santa Clara for nearly 5 years; one of my assignments was to advise the Registrar of Voters. I started my law career in a private law firm where I handled general litigation matters for ten years.

<sup>2</sup> **Sec. 67.24. Public Information That Must Be Disclosed.**

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:



(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

(i) Sex, age and ethnic group;

(ii) Years of graduate and undergraduate study, degree(s) and major or discipline;

(iii) Years of employment in the private and/or public sector;

(iv) Whether currently employed in the same position for another public agency.

(v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

(5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

(d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

(1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);

(2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

(3) The identity of a confidential source;

(4) Secret investigative techniques or procedures;

(5) Information whose disclosure would endanger law enforcement personnel; or

(6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

(e) Contracts, Bids and Proposals

- (1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.
- (2) Notwithstanding the provisions of this subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.
- (3) During the course of negotiations for:
- (i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;
  - (ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or
  - (iii) any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the city attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.
- (f) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other

services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance.

<sup>3</sup> **Sec. 67.26. Withholding Kept to a Minimum.**

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

<sup>4</sup> **Sec. 67.34. Willful Failure Shall Be Official Misconduct.**

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

<sup>5</sup> **Sec. 67.25. Immediacy of Response.**

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

**<sup>6</sup> Sec. 67.27. Justification of Withholding.**

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

**<sup>7</sup> SEC. 15.105. SUSPENSION AND REMOVAL.**

(a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and any member of the Airport Commission, Asian Art Commission, Civil Service Commission, Commission on the Status of Women, Golden Gate Concourse Authority Board of Directors, Health Commission, Human Services Commission, Juvenile Probation Commission, Municipal Transportation Agency Board of Directors, Port Commission, Public Utilities Commission, Recreation and Park Commission, Fine Arts Museums Board of Trustees, Taxi Commission, War Memorial and Performing Art Center Board of Trustees, Board of Education or Community College Board is subject to suspension and removal for official misconduct as provided in this section. Such officer may be suspended by the Mayor and the Mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. Upon such suspension, the Mayor shall immediately notify the Ethics Commission and Board of Supervisors thereof in writing and the cause thereof, and shall present written charges against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their next regular meetings following such suspension, and shall immediately furnish a copy of the same to such officer, who shall have the right to appear with counsel before the Ethics Commission in his or her defense. The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a



recommendation as to whether the charges should be sustained. If, after reviewing the complete record, the charges are sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission, the suspended officer shall thereby be reinstated.

(b) BUILDING INSPECTION COMMISSION, PLANNING COMMISSION, BOARD OF APPEALS, ELECTIONS COMMISSION, ETHICS COMMISSION, AND ENTERTAINMENT COMMISSION. Members of the Building Inspection Commission, the Planning Commission, the Board of Appeals, the Elections Commission, the Ethics Commission, and the Entertainment Commission may be suspended and removed pursuant to the provisions of subsection (a) of this section except that the Mayor may initiate removal only of the Mayor's appointees and the appointing authority shall act in place of the Mayor for all other appointees.

(c) REMOVAL FOR CONVICTION OF A FELONY CRIME INVOLVING MORAL TURPITUDE.

(1) Officers Enumerated in Subsections (a) and (b).

(A) An appointing authority must immediately remove from office any official enumerated in subsections (a) or (b) upon:

(i) a court's final conviction of that official of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the official was convicted warrants removal.

(B) For the purposes of this subsection, the Mayor shall act as the appointing authority for any elective official.

(C) Removal under this subsection is not subject to the procedures in subsections (a) and (b) of this section.

(2) Other Officers and Employees.

(A) At will appointees. Officers and employees who hold their positions at the pleasure of their appointing authority must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(B) For cause appointees. Officers and employees who by law may be removed only for cause must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(3) Penalty for Failure to Remove. Failure to remove an appointee as required under this subsection shall be official misconduct.

(d) DISQUALIFICATION.

(1) (A) Any person who has been removed from any federal, state, County or City office or employment upon a final conviction of a felony crime involving moral turpitude shall be ineligible for election or appointment to City office or employment for a period of ten years after removal.

(B) Any person removed from any federal, state, County or City office or employment for official misconduct shall be ineligible for election or appointment to City office or employment for a period of five years after removal.

(2) (A) Any City department head, board, commission or other appointing authority that removes a City officer or employee from office or employment on the grounds of official misconduct must invoke the disqualification provision in subsection (d)(1)(B) and provide notice of such disqualification in writing to the City officer or employee.

(B) Upon the request of any former City officer or employee, the Ethics Commission may, after a public hearing, overturn the application of the disqualification provision of subsection (d)(1)(B) if: (i) the decision that the former officer or employee engaged in official misconduct was not made after a hearing by a court, the Board of Supervisors, the Ethics Commission, an administrative body, an administrative hearing officer, or a labor arbitrator; and (ii) if the officer or employee does not have the right to appeal his or her restriction on holding future office or employment to the San Francisco Civil Service Commission.

(e) OFFICIAL MISCONDUCT. Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office.

<sup>a</sup> Sec. 67.21. Process for Gaining Access to Public Records; Administrative Appeals.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when



not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petitioner, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petitioner, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petitioner, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public.

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The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

**<sup>8</sup> Sec. 67.30. The Sunshine Ordinance Task Force.**

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to it an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.

(c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

(d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.

(e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance.

<sup>10</sup> **Sec. 4.123. Confidentiality Protection for Whistleblower Program Complainants and Investigations.**

(a) **WHISTLEBLOWER IDENTITY AND INVESTIGATIONS.** Every officer and employee of the City shall keep confidential: Controller

(i) The identity of any person who makes a complaint to the Whistleblower Program under Section 4.107 of this Chapter, and any information that would lead to the disclosure of the person's identity, unless the person who made the complaint provides written authorization for the disclosure.

(ii) Complaints or reports to the Whistleblower Program and information related to the investigation of the matter, including drafts, notes, preliminary reports, working papers, records of interviews, communications with complainants and witnesses, and any other materials and information gathered or prepared in the course of the investigation.

The protection of confidentiality set forth in this Section applies irrespective of whether the information was provided in writing and whether the information was provided or is maintained in electronic, digital, paper or any other form or medium.

(b) **INQUIRY REGARDING IDENTITY PROHIBITED.** In order to assure effective implementation of the provisions of this Section providing confidentiality to whistleblowers, City officers and employees may not use any City resources, including work time, to ascertain or attempt to ascertain directly or indirectly the identity of any person who has made a complaint to the Whistleblower Program, unless such person has provided written authorization for the disclosure. Nothing in this Section shall preclude an officer or employee assigned to investigate a complaint under this Chapter from ascertaining the identity of a complainant to the extent necessary to conduct the investigation.

(c) **EXCEPTIONS.** Nothing in this Section shall preclude the Controller from (i) disclosing the identity of a person or other information to the extent necessary to conduct a civil or criminal investigation or to take any enforcement action, including any action to discipline an employee or take remedial action against a contractor, or (ii) releasing information as part of a referral when referring any matter to another City department, commission, board, officer or employee, or to other governmental agencies, for investigation and possible disciplinary, enforcement or remedial action, or (iii) releasing information to the Citizens

Audit Review Board so that it may carry out its duty to provide advisory input to the Controller on the Whistleblower Program, provided that information is prepared so as to protect the confidentiality of persons making complaints and of investigations, or (iv) releasing information to inform the public of the nature of the actions taken by the Controller in the operation of the Whistleblower Program provided that information is prepared so as to protect the confidentiality of persons making complaints and of investigations.

**<sup>11</sup> Government Code Section 53087.6.**

(a) (1) A city, county, or city and county auditor or controller who is elected to office may maintain a whistleblower hotline to receive calls from persons who have information regarding fraud, waste, or abuse by local government employees.

(2) A city, county, or city and county auditor or controller who is appointed by, or is an employee of, a legislative body or the government agency that is governed by the city, county, or city and county, shall obtain approval of that legislative body or the government agency, as the case may be, prior to establishing the whistleblower hotline.

(b) The auditor or controller may refer calls received on the whistleblower hotline to the appropriate government authority for review and possible investigation.

(c) During the initial review of a call received pursuant to subdivision (a), the auditor or controller, or other appropriate governmental agency, shall hold in confidence information disclosed through the whistleblower hotline, including the identity of the caller disclosing the information and the parties identified by the caller.

(d) A call made to the whistleblower hotline pursuant to subdivision (a), or its referral to an appropriate agency under subdivision (b), may not be the sole basis for a time period under a statute of limitation to commence. This section does not change existing law relating to statutes of limitation.

(e) (1) Upon receiving specific information that an employee or local government has engaged in an improper government activity, as defined by paragraph (2) of subdivision (f), a city or county auditor or controller may conduct an investigative audit of the matter. The identity of the person providing the information that initiated the investigative audit shall not be disclosed without the written permission of that person, unless the disclosure is to a law enforcement agency that is conducting a criminal investigation. If the specific information is in regard to improper government activity that occurred under the jurisdiction of another city, county, or city and county, the information shall be forwarded to the appropriate auditor or controller for that city, county, or city and county.

(2) Any investigative audit conducted pursuant to this subdivision shall be kept confidential, except to issue any report of an investigation that has been substantiated, or to release any findings resulting from a completed investigation that are deemed necessary to serve the interests of the public. In any event, the identity of the individual or individuals reporting the improper government activity, and the subject employee or employees shall be kept confidential.

(3) Notwithstanding paragraph (2), the auditor or controller may provide a copy of a substantiated audit report that includes the identities of the subject employee or employees and other pertinent information concerning the investigation to the appropriate appointing authority for disciplinary purposes. The substantiated audit report, any subsequent investigatory materials or information, and the disposition of any resulting disciplinary proceedings are subject to the confidentiality provisions of applicable local, state, and federal statutes, rules, and regulations.

(f) (1) For purposes of this section, "employee" means any individual employed by any county, city, or city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, or political subdivision that falls under the auditor's or controller's jurisdiction.

(2) For purposes of this section, "fraud, waste, or abuse" means any activity by a local agency or employee that is undertaken in the performance of the employee's official duties, including activities deemed to be outside the scope of his or her employment, that is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct.

<sup>12</sup> California Government Code Section 6254(k).

<sup>13</sup> California Government Code Section 6276.

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

<sup>14</sup> California Government Code Section 6276.32.

Narcotic addict outpatient revocation proceeding, confidentiality of reports, Section 3152.5, Welfare and Institutions Code.

Narcotic and drug abuse patients, confidentiality of records, Section 11845.5, Health and Safety Code.

Native American graves, cemeteries and sacred places, records of, subdivision (r), Section 6254.

Notary public, confidentiality of application for appointment and commission, Section 8201.5.

Nurse, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 2770.12, Business and Professions Code.

Obscene matter, defense of scientific or other purpose, confidentiality of recipients, Section 311.8, Penal Code.

Occupational safety and health investigations, confidentiality of complaints and complainants, Section 6309, Labor Code.

Occupational safety and health investigations, confidentiality of trade secrets, Section 6322, Labor Code.

Official information acquired in confidence by public employee, disclosure of, Sections 1040 and 1041, Evidence Code.

Oil and gas, confidentiality of proposals for the drilling of a well, Section 3724.4, Public Resources Code.

Oil and gas, disclosure of onshore and offshore exploratory well records, Section 3234, Public Resources Code.

Oil and gas, disclosure of well records, Section 3752, Public Resources Code.

Oil and gas leases, surveys for permits, confidentiality of information, Section 6826, Public Resources Code.

Oil spill feepayer information, prohibition against disclosure, Section 46751, Revenue and Taxation Code.

Older adults receiving county services, providing information between county agencies, confidentiality of, Section 9401, Welfare and Institutions Code.

Organic food certification organization records, release of, Section 110845, Health and Safety Code.

Osteopathic physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2369, Business and Professions Code.

<sup>15</sup> Ethics Commission Regulations for Investigations and Enforcement Proceedings § VI.A.

<sup>16</sup> Ethics Commission Regulations for Investigations and Enforcement Proceedings § VI.D.





## *Memorandum*

**TO:** SAN FRANCISCO  
ETHICS COMMISSION

**FROM:** LISA HERRICK  
Sr. Deputy City Attorney

**SUBJECT:** Referral from Sunshine  
Ordinance Task Force re  
Ethics Complaint No. 09-110816

**DATE:** September 6, 2012

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### **INTRODUCTION**

The San Francisco Sunshine Ordinance Task Force ("Sunshine Task Force") referred Ethics Complaint No. 09-110816 to the Ethics Commission finding violations of the San Francisco Sunshine Ordinance and California Public Records Act against the Ethics Commission. The referral from the Sunshine Task Force also provided notification of willful failure and official misconduct findings against the Executive Director of the Commission. Since this matter involves the Executive Director of the Ethics Commission, I have been asked to review and investigate the Complaint consistent with the Ethics Commission Regulations for Investigations and Enforcement Proceedings.<sup>1</sup>

### **SUMMARY OF COMPLAINT**

On March 6, 2011, Patrick Monette-Shaw filed a complaint with the Sunshine Task Force alleging that the Ethics Commission violated Sections 67.24<sup>2</sup>, 67.26<sup>3</sup> and 67.34<sup>4</sup> of the Sunshine Ordinance by failing to provide records in response to an Immediate Disclosure Request for:

1. Any and all written communication(s) between the Ethics Commission and the City Controller's Office (including the City Controller, the City Services Auditor, and/or the Controller's Whistleblower Program) regarding this complaint.
2. The Ethics Commission investigative file(s) regarding the patient gift fund complaint.
3. Any closing memo(s) authored by the Ethics Commission staff regarding this LHH patient gift fund complaint.

### **PROCEEDINGS BEFORE SUNSHINE ORDINANCE TASK FORCE**

The Sunshine Task Force heard this matter on April 26, 2011.

In an Order of Determination dated June 7, 2011, the Task Force found that the Ethics Commission violated Section 67.26 of the Sunshine Ordinance and Government Code



Section 6253 of the California Public Records Act by not disclosing the records requested. The Task Force ordered the Ethics Commission to release the records requested within 5 business days and appear before the Compliance and Amendments Committee on June 14, 2011.

On June 14, 2011, not enough members of the Compliance and Amendments Committee were present to reach a quorum and the Committee could not meet.

At the next meeting of the Compliance and Amendments Committee on July 12, 2011, the Committee recommended that the Task Force find that Ethics Commission staff violated Sunshine Ordinance Section 67.34 for willful failure to disclose the records requested.

On July 26, 2011, the Task Force adopted the recommendation of the Compliance and Amendments Committee to find Ethics Commission staff in willful violation of the Order of Determination pursuant to Section 67.34 of the Sunshine Ordinance and San Francisco City Charter Section 15.105(e).<sup>5</sup> The Task Force also voted to forward the matter to the District Attorney and the Ethics Commission for enforcement and forward a copy of the referral letter to Mayor Ed Lee and the San Francisco Civil Grand Jury.

On August 15, 2011, the Task Force referred its Order of Determination issued June 7, 2011 to the Ethics Commission pursuant to Sunshine Ordinance Sections 67.21<sup>6</sup> and 67.30.<sup>7</sup> The Task Force's August 15 letter also provided notification of willful failure and official misconduct findings against Ethics Commission staff for failure to comply with the June 7 Order of Determination.

## **REFERRALS TO OTHER AGENCIES**

On August 25, 2011, Garrett Chatfield, Investigator with the Ethics Commission, referred the Task Force's Order of Determination to Andrew Shen, Deputy City Attorney, San Francisco City Attorney's Office and Marc Katz, Assistant District Attorney, San Francisco District Attorney's Office.

On August 31, 2011, Marc Katz informed Mr. Chatfield:

At this time, our office is not pursuing a criminal investigation concerning this complaint. Your letter notes that the Ethics Commission is "in discussions with various outside agencies to determine if the matter ... can be referred to another agency." Please provide us with the contact information for the person/agency that will handle the investigation. We will ask that agency to inform us if they uncover evidence of criminal conduct.

On September 8, 2011, Mr. Shen wrote to John St. Croix, Executive Director of the Ethics Commission, to inform him that the City Attorney's Office would not investigate Complaint No. 09-110816.

## **REVIEW OF THE RECORD**

I reviewed the entire file in this matter, including the Complaint and all memoranda and correspondence related to the proceedings before the Sunshine Task Force. I determined that it was not necessary for me to conduct additional interviews.

## **LEGAL ANALYSIS**

Appendix C3.699-13(a) of the San Francisco City Charter provides in part:

If the commission, upon the sworn complaint or on its own initiative, determines that there is sufficient cause to conduct an investigation, it shall investigate alleged violations of this charter or City ordinances relating to campaign finance, lobbying, conflicts of interest and governmental ethics.... The investigation shall be conducted in a confidential manner. Records of any investigation shall be considered confidential information to the extent permitted by state law. Any member or employee of the commission or other person who, prior to a determination concerning probable cause, discloses information about any preliminary investigation, except as necessary to conduct the investigation, shall be deemed guilty of official misconduct. The unauthorized release of confidential information shall be sufficient grounds for the termination of the employee or removal of the commissioner responsible for such release.

Sections 6276<sup>8</sup> and 6276.32<sup>9</sup> of the California Public Records Act exempt from disclosure "official information." California Evidence Code 1040 defines "official information" as follows:

(a) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

The City may refuse to disclose information acquired in confidence by a public employee. Although Drs. Kerr and Rivero apparently submitted a "Waiver of Confidentiality Request for our LHH Gift Fund Whistleblower Complaints", the conduct of investigative audits is governed by the City's Charter and state law and so neither physician is authorized to waive the privilege.

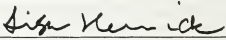
The City's Charter deems confidential records of investigations by the Ethics Commission to the extent provided by state law. Since state law protects "official information" and the Sunshine Ordinance is preempted by the City's Charter, the information requested by Mr. Monette-Shaw cannot be disclosed.

### RECOMMENDATION

For the reasons explained above, the Sunshine Ordinance Task Force did not apply the law correctly. I recommend that the Commission dismiss Complaint 09-110816, in which the Sunshine Task Force found violations of Sections 67.25 67.26, 67.27 and 67.34 of the Sunshine Ordinance.

Please note that one member of the Commission may cause this Complaint to be calendared for consideration by the full Commission in an open session at the next Commission meeting, which is scheduled for September 24, 2012.<sup>10</sup> A request for consideration by the full Commission must be received by staff to the Ethics Commission by Wednesday, September 19, 2012 (no fewer than five days before the date of the Commission meeting) so that staff may comply with the applicable notice and agenda requirements.<sup>11</sup>

RICHARD DOYLE  
City Attorney

By:   
LISA HERRICK  
Sr. Deputy City Attorney

For questions, please contact Lisa Herrick, Sr. Deputy City Attorney, at 408-535-1900.

<sup>1</sup> I am a Senior Deputy City Attorney for the San Jose Office of the City Attorney. One of my first assignments when I joined the City Attorney's Office in August 2006 was to staff the Sunshine Reform Task Force, which met for two years. Over that period, the Task Force made a number of recommendations about increasing transparency in meetings and access to documents in San Jose.

I also advise City officials and employees on the Brown Act, California Public Records Act, Political Reform Act and the City's ethics ordinances.

I advise the City Clerk on all matters related to the Clerk's Office, including elections. I also staff the Elections Commission. I have handled litigation matters involving the City's Campaign Finance and Lobbying ordinances.

Before joining the City Attorney's Office, I worked for the County of Santa Clara for nearly 5 years; one of my assignments was to advise the Registrar of Voters. I started my law career in a private law firm where I handled general litigation matters for ten years.

<sup>2</sup> **Sec. 67.24. Public Information That Must Be Disclosed.**

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

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(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

- (i) Sex, age and ethnic group;
- (ii) Years of graduate and undergraduate study, degree(s) and major or discipline;
- (iii) Years of employment in the private and/or public sector;
- (iv) Whether currently employed in the same position for another public agency.
- (v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.
- (2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.
- (3) The job description of every employment classification.
- (4) The exact gross salary and City-paid benefits available to every employee.
- (5) Any memorandum of understanding between the City or department and a recognized employee organization.
- (6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.
- (7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.
- (d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

- (1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
- (2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

- (3) The identity of a confidential source;
- (4) Secret investigative techniques or procedures;
- (5) Information whose disclosure would endanger law enforcement personnel; or
- (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

(e) Contracts, Bids and Proposals

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(2) Notwithstanding the provisions of this subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

- (i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;
- (ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or
- (iii) any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the city



attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

(f) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance.

<sup>3</sup> **Sec. 67.26. Withholding Kept to a Minimum.**

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

<sup>4</sup> **Sec. 67.34. Willful Failure Shall Be Official Misconduct.**

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.



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<sup>5</sup> SEC. 15.105. SUSPENSION AND REMOVAL.

(a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and any member of the Airport Commission, Asian Art Commission, Civil Service Commission, Commission on the Status of Women, Golden Gate Concourse Authority Board of Directors, Health Commission, Human Services Commission, Juvenile Probation Commission, Municipal Transportation Agency Board of Directors, Port Commission, Public Utilities Commission, Recreation and Park Commission, Fine Arts Museums Board of Trustees, Taxi Commission, War Memorial and Performing Art Center Board of Trustees, Board of Education or Community College Board is subject to suspension and removal for official misconduct as provided in this section. Such officer may be suspended by the Mayor and the Mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. Upon such suspension, the Mayor shall immediately notify the Ethics Commission and Board of Supervisors thereof in writing and the cause thereof, and shall present written charges against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their next regular meetings following such suspension, and shall immediately furnish a copy of the same to such officer, who shall have the right to appear with counsel before the Ethics Commission in his or her defense. The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained. If, after reviewing the complete record, the charges are sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission, the suspended officer shall thereby be reinstated.

(b) BUILDING INSPECTION COMMISSION, PLANNING COMMISSION, BOARD OF APPEALS, ELECTIONS COMMISSION, ETHICS COMMISSION, AND ENTERTAINMENT COMMISSION. Members of the Building Inspection Commission, the Planning Commission, the Board of Appeals, the Elections Commission, the Ethics Commission, and the Entertainment Commission may be suspended and removed pursuant to the provisions of subsection (a) of this section except that the Mayor may initiate removal only of the Mayor's appointees and the appointing authority shall act in place of the Mayor for all other appointees.

(c) REMOVAL FOR CONVICTION OF A FELONY CRIME INVOLVING MORAL TURPITUDE.

(1) Officers Enumerated in Subsections (a) and (b).

(A) An appointing authority must immediately remove from office any official enumerated in subsections (a) or (b) upon:

(i) a court's final conviction of that official of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the official was convicted warrants removal.

(B) For the purposes of this subsection, the Mayor shall act as the appointing authority for any elective official.

(C) Removal under this subsection is not subject to the procedures in subsections (a) and (b) of this section.

(2) Other Officers and Employees.

(A) At will appointees. Officers and employees who hold their positions at the pleasure of their appointing authority must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(B) For cause appointees. Officers and employees who by law may be removed only for cause must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(3) Penalty for Failure to Remove. Failure to remove an appointee as required under this subsection shall be official misconduct.

(d) DISQUALIFICATION.

(1) (A) Any person who has been removed from any federal, state, County or City office or employment upon a final conviction of a felony crime involving moral turpitude shall be ineligible for election or appointment to City office or employment for a period of ten years after removal.

(B) Any person removed from any federal, state, County or City office or employment for official misconduct shall be ineligible for election or appointment to City office or employment for a period of five years after removal.

(2) (A) Any City department head, board, commission or other appointing authority that removes a City officer or employee from office or employment on the grounds of official misconduct must invoke the disqualification provision in subsection (d)(1)(B) and provide notice of such disqualification in writing to the City officer or employee.

(B) Upon the request of any former City officer or employee, the Ethics Commission may, after a public hearing, overturn the application of the disqualification provision of subsection (d)(1)(B) if: (i) the decision that the former officer or employee engaged in official misconduct was not made after a hearing by a court, the Board of Supervisors, the Ethics Commission, an administrative body, an administrative hearing officer, or a labor arbitrator; and (ii) if the officer or employee does not have the right to appeal his or her restriction on holding future office or employment to the San Francisco Civil Service Commission.

(e) OFFICIAL MISCONDUCT. Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office.

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**<sup>6</sup> Sec. 67.21. Process for Gaining Access to Public Records; Administrative Appeals.**

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

<sup>7</sup> **Sec. 67.30. The Sunshine Ordinance Task Force.**

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated Interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of

whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to it an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.

(c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

(d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.

(e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance.

<sup>8</sup> California Government Code Section 6276.

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.



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<sup>9</sup> **California Government Code Section 6276.32.**

Narcotic addict outpatient revocation proceeding, confidentiality of reports, Section 3152.5, Welfare and Institutions Code.

Narcotic and drug abuse patients, confidentiality of records, Section 11845.5, Health and Safety Code.

Native American graves, cemeteries and sacred places, records of, subdivision (r), Section 6254.

Notary public, confidentiality of application for appointment and commission, Section 8201.5.

Nurse, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 2770.12, Business and Professions Code.

Obscene matter, defense of scientific or other purpose, confidentiality of recipients, Section 311.8, Penal Code.

Occupational safety and health investigations, confidentiality of complaints and complainants, Section 6309, Labor Code.

Occupational safety and health investigations, confidentiality of trade secrets, Section 6322, Labor Code.

Official information acquired in confidence by public employee, disclosure of, Sections 1040 and 1041, Evidence Code.

Oil and gas, confidentiality of proposals for the drilling of a well, Section 3724.4, Public Resources Code.

Oil and gas, disclosure of onshore and offshore exploratory well records, Section 3234, Public Resources Code.

Oil and gas, disclosure of well records, Section 3752, Public Resources Code.

Oil and gas leases, surveys for permits, confidentiality of information, Section 6826, Public Resources Code.

Oil spill feepayer information, prohibition against disclosure, Section 46751, Revenue and Taxation Code.

Older adults receiving county services, providing information between county agencies, confidentiality of, Section 9401, Welfare and Institutions Code.

Organic food certification organization records, release of, Section 110845, Health and Safety Code.

Osteopathic physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2369, Business and Professions Code.

<sup>10</sup> Ethics Commission Regulations for Investigations and Enforcement Proceedings § VI.A.

<sup>11</sup> Ethics Commission Regulations for Investigations and Enforcement Proceedings § VI.D.



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

### EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of September 24, 2012

BENEDICT Y. HUR  
CHAIRPERSON

AMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

#### 1. November 6, 2012 election.

The odd-numbered districts for the Board of Supervisors and four seats each for the Board of Education and Community College Board will be voted on in the November 6, 2012 election. Twenty-six candidates for the Board of Supervisors, eleven candidates for the Board of Education and ten candidates for the Community College Board have qualified for the ballot.

Twelve candidates for the Board of Supervisors have been certified as eligible to receive public funds. As of September 18, the Commission disbursed a total of \$585,061 to the 12 qualified candidates. Information regarding the amounts disbursed to each candidate and the amounts privately raised and spent by each candidate is posted to data dashboards on the Commission's website.

#### 2. Investigation and enforcement program.

As of September 14, 2012, there are 20 pending formal complaints alleging violations within the Ethics Commission's jurisdiction. Out of the nine complaints alleging Sunshine Ordinance violations, the resolution of seven is pending the approval of the Commission's Sunshine Ordinance regulations.

Category	# of Complaints
Campaign Finance	5
Conflict of Interest	3
Governmental Ethics	0
Lobbyist Ordinance	1
Campaign Consultant Ordinance	2
Sunshine Ordinance	9
<b>TOTAL</b>	<b>20</b>

#### 3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline was on July 31, 2012 for the First Semi-Annual statement, which covers the reporting period ending June 30, 2012. Seven committees still have not filed their required statements. They have been sent a Second Non-Specific Written Notice and placed on the Non-Responsible Filers List. In the interim, staff continues to receive and process campaign statements for other filing deadlines. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations. The



next filing deadline is October 5, 2012 for the First Pre-Election Statement, which covers the reporting period ending September 30, 2012.

b. Collection of late filing fees and contribution forfeitures. In the FY12-13, as of September 14, the Commission collected a total of \$4,407 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$70,635, of which waiver requests are pending for \$18,622; and \$24,559 is pending at the Bureau of Delinquent Revenues.

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on pending accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnnie Carter for Community College Board	1226264	Johnnie Carter	6/16/06	\$9,520	\$6,595	\$6,595
2	Committee to Elect M. Valle for Treasurer	1278937	Manuel B. Valle	6/14/07	\$5,525	\$5,525	\$5,525
3	Omar Khalif for Board of Educ.	1287030	Omar Khalif	7/30/09	\$1,800	\$1,775	\$1,775
4	Myrna Lim for District 11 Sup	1306882	Myrna Lim	7/30/09	\$1,180	\$1,180	\$1,180
5	Myrna Lim for District 11 Sup	1256697	Jia Jun Chen	8/20/07	\$3,855	\$2,775	\$2,775
6	San Francisco Women's Political Committee	1243711	Giselle Barry	5/16/06	\$1,906	\$50	\$50
7	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
8	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	2,658.90	\$2,658.90	2,658.90
						<b>TOTAL</b>	<b>\$24,559</b>

#### 4. Revenues report.

For FY 12-13, the Commission was budgeted to generate \$100,000 in revenues. As of September 17, 2012, the Commission received \$ 7,747 as summarized below. The figure represents collection of approximately seven percent of expected revenues for FY 12-13.

Revenues received as of September 17, 2012:

Source	Budgeted Amount FY 12-13	Receipts
Lobbyist Fees	\$27,000	\$1500
Other Ethics General	\$1,000	\$40
Campaign Finance Fines	\$50,000	\$4,407
Campaign Consultant Fees	\$18,000	\$800
Lobbyist Fines	\$1,000	\$400
Statements of Economic Interests Fines	\$1,000	\$0
Other Ethics Fines	\$1,000	\$600
Campaign Consultant Fines	\$1,000	\$0
Unallocated	\$0	\$0
Total	\$100,000	\$7,747

##### **5. Status of legislative proposals endorsed by Ethics Commission.**

Regulations approved by the Commission at its meeting on July 23, 2012 relating to section 1.126 of the Campaign and Governmental Conduct Code took effect September 21, 2012. Among other things, the regulations clarify that “an individual holding City elective office” in CFRO section 1.126(b)(1)(A) includes any committee controlled by that individual formed to support that individual’s election to a local or state elective office; and that “a committee controlled by such individual or candidate” in CFRO section 1.126(b)(1)(C) includes any committee controlled by the individual or candidate formed either to support or oppose a candidate for local or state elective office or to support or oppose a local or state ballot measure.

##### **6. Lobbyist program.**

As of September 18, 2012, 87 individual lobbyists were registered with the Commission. For FY 12–13, as of September 18, 2012, total revenues collected were \$1,900, including \$1,500 in lobbyist registration fees and \$400 in late fines. The filing deadline for the next lobbyist disclosure statement is October 15, 2012.

On September 18, 2012, staff posted a new lobbyist self-registration system on the Commission’s web site. Lobbyists can use the system to enter required registration information, establish an on-line filing account, upload a photograph for the Commission’s on-line lobbyist directory, authorize representatives to submit statements on their behalf, and pay registration fees. This project was completed as part of the Commission’s contract with Netfile.

##### **7. Campaign Consultant program.**

As of September 17, 2012, thirty-seven campaign consultants were registered with the Commission. \$800 in registration fees have been collected so far during the 2012-2013 fiscal year. The next campaign consultant quarterly report deadline is Monday, December 17, 2012. Staff will send reminders to all active campaign consultants two weeks before the deadline.

## **8. Outreach and Education.**

On August 16, staff conducted a Candidates' Training, which covered filing requirements for potential candidates for the City elective offices of the Board of Supervisors, Board of Education, and Community College Board. This training focused on campaign finance requirements that apply to candidates for all City elective offices and provided an overview of the Board of Supervisors' public financing program. A new web video of the Candidates' Training was posted on September 4.

On September 12, 2012, staff met with 25 members of the China Professional Eligibility of Personnel Delegation. The group was sponsored by the U.S. – China Exchange Council (USCEC), which is a California registered 501 (C) (3) non-profit organization dedicated to professional exchange programs between the U.S. and China. Staff enjoyed a very animated discussion with the members regarding the ethical rules and regulations governing City officers and employees.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments.

The following are web video trainings available on the Commission website:

- Department of Building Inspection SIA Training
- Candidates' Training (*new version posted on September 4*)
- Controller's Office SIA Training
- Department on the Environment SIA Training
- Governmental Ethics Ordinance Training for City Employees
- Lobbyist Ordinance Training
- Medical Examiner's Office SIA Training
- Non-Candidate Recipient Committee Training
- Public Utilities Commission SIA Training
- SIA Template Language Training

## **9. San Francisco Campaign Finance Dashboard Web Site**

Earlier this year, staff worked with the Department of Technology to publish the Commission's campaign finance data to the City's new data web site at [data.sfgov.org](http://data.sfgov.org). Campaign finance data can be sorted, filtered, graphed, or plotted on maps using the tools available from the web site.

Staff used this new resource to build a series of dashboards on the Commission's web site to track campaign finance activity in the Board of Supervisors, Board of Education, and Community College Board races, and ballot measures leading up to the November 6, 2012 election. The graphs and maps summarize:

- Total contributions and expenditures for each candidate controlled and ballot measure committee;

- Historical cash balances for each candidate controlled committee;
- Contributors grouped by zip code and plotted on an interactive map;
- Third-party expenditures;
- Public financing disbursements; and
- Expenditure ceilings.

Respectfully submitted,



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John St. Croix  
Executive Director

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[DRAFT]

Minutes of the Regular Meeting of  
The San Francisco Ethics Commission  
September 24, 2012  
Room 400, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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**I. Call to order and roll call.**

Chairperson Hur called the meeting to order at 5:34 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamieenne Studley, Vice-Chairperson; Beverly Hayon, Commissioner; and Paul A. Renne, Commissioner [excused at 9:33 PM]. Commissioner Liu was excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Garrett Chatfield, Investigator/Legal Analyst; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney (DCA) [excused at 9:50 PM]; Jon Givner, DCA [arrived at 9:51 PM].

OTHERS PRESENT: Larry Bush; Patrick Monette-Shaw; Allen Grossman; Bruce Wolfe; Hope Johnson; Peter Warfield; D. Bowler; David Pilpel; Allyson Washburn; Richard Knee; Dr. Derek Kerr; Paul Currier; and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Staff Memorandum re: Regulations Regarding Enforcement of Sunshine Ordinance Complaints, dated September 14, 2012.
- Draft Ethics Commission Regulations for Complaints Alleging Violations of the Sunshine Ordinance.
- Draft Ethics Commission Regulations for Investigations and Enforcement Proceedings.
- Draft follow-up letter from the Commission to the Mayor regarding Jewelle Gomez, President of the San Francisco Library Commission, dated September 24, 2012.
- Memorandum from Sr. Deputy City Attorney of the City of San Jose, regarding the Referral from Sunshine Ordinance Task Force re Ethics Complaint No. 08-110816, dated September 6, 2012.
- Memorandum from Sr. Deputy City Attorney of the City of San Jose, regarding the Referral from Sunshine Ordinance Task Force re Ethics Complaint No. 09-110816, dated September 6, 2012.
- Draft Minutes of the Regular Meeting of the San Francisco Ethics Commission on July 23, 2012.
- Draft Minutes of the Special Meeting of the San Francisco Ethics Commission on September 11, 2012.
- Executive Director's Report to the Ethics Commission for the Meeting of September 24, 2012.

**II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

Larry Bush referenced a list of about 30 officials who had not filed Statements of Economic Interests (SEIs) by the end of August 2012. He stated that there had been no fine letters this year or last year and that similar people had failed to file last year. He stated that this issue had not been mentioned in the Executive Director's Report and that it should be the Commission's policy to enforce.

Patrick Monette-Shaw stated that it was unethical for the Commission to decide a case involving its own Executive Director. He stated that staff had noted that the Commission could not adjudicate these matters and stated that the Commission had a conflict of interest. He asked that the Commission take these matters off the calendar and transfer them to another jurisdiction.

Allen Grossman stated that the Commission and staff must set the standard of ethical behavior. He stated that the draft amendments, part of the third agenda item, were not submitted to the Sunshine Ordinance Task Force. He stated that the Commission is by-passing a non-functional Task Force. He stated that the Monette-Shaw cases cannot be considered by the Commission, as the Executive Director is a named Respondent.

Bruce Wolfe stated that agenda items VI and VII were posted incorrectly and referred to the Brown Act. He stated that the Commission must disclose the item or items to be discussed in closed session.

Hope Johnson stated that the draft minutes were not available online. She agreed with Mr. Grossman about the Task Force's inability to participate in the drafting of the regulations. She disagreed with the proposed statute of limitations.

Peter Warfield stated that the members of the public have given wonderful comments and notes. He agreed with previous speakers and requested that the Commission postpone action on the draft amendments until the Task Force is able to meet. He stated that the agenda must show what explanatory documents have been distributed to the Commission and which are available. He stated that the amendments should be considered seriously.

A member of the public stated that there was no court reporter during the final Commission meeting regarding the Sheriff. He stated that none of the minutes were available online. He stated that the Commission was in violation of the Brown Act and it is all a misdemeanor. He referred to the May 24, 2011 violations of Supervisor Weiner.

D. Bowler stated that the Commission should postpone the matter since Task Force members were dismissed because they criticized the members of the Board who were in violation of the Sunshine Ordinance. She stated that Cathy Lintz spoke out of order and unjustifiably and forcibly removed. She stated that Ms. Lintz was handcuffed. She stated that the Commission needs the Task Force's advice.

David Pilpel stated that the public's statements during the Sheriff's meetings should have been included in the materials submitted to the Board.



**III. Consideration of draft amendments to the Commission's regulations governing the handling of complaints alleging violations of the Sunshine Ordinance and referrals of such complaints from the Sunshine Ordinance Task Force ("SOTF").**

Executive Director St. Croix stated that the proposed regulations attempt to expedite the process for handling Sunshine complaints. He stated that it is unclear when the Task Force will meet again and suggested that the Commission move forward on the regulations. He stated that the proposal has six sets of decision points.

Chairperson Hur stated that the draft is a result of a productive meeting held with the Task Force in April 2012. He stated that the document reflects what was discussed during that meeting as the Task Force was an equal participant in putting this together.

Vice-Chairperson Studley asked what would happen if an elected official or department head were named as Respondents, as well as another type of City official or employee in the same matter. Chairperson Hur stated that there would be two different proceedings. Vice-Chairperson Studley then suggested that the Commission would be able to amend regulations if the Task Force meetings and has suggestions. She suggested acting and then accepting comments in the future.

DECISION POINTS 1-1 and 1-2

Chairperson Hur suggested changing the language in the definition of "exculpatory information" from "is not guilty" to "has not committed."

Public Comment:

Richard Knee stated that the Sunshine Ordinance Task Force is dormant right now. He suggested using the definition of "public records" that is contained in Sunshine Ordinance section 67.24.

David Pilpel stated that he agreed with Mr. Knee, but that section 67.24 was not the correct reference. He suggested the definition in Sunshine Ordinance section 67.20(b) or (c). He also suggested changing the definition of "referral."

Allen Grossman stated that the draft omits orders from the Supervisor of Records. He stated that the various members on the Task Force have had no experience on the Task Force and have never heard a complaint. He stated that the regulations will reflect Mr. St. Croix's hostility to the Task Force and its work.

Peter Warfield stated that the agenda does not indicate whether there were any available documents accompanying this agenda item. He was unclear to what the Commission was referring.

A member of the public stated that Sunshine Ordinance section 67.24 is clearer than the proposed definition of “public records.” He also stated that section 67.36 supersedes all local laws. He stated that “public records” should include audio and video recordings.

Hope Johnson urged the Commission to wait on this item so that the Task Force could have one meeting. She stated that it is a mischaracterization to call a Task Force referral a complaint, as in the proposed definition of “complaint.” She also stated that the language for “mitigating information” appears to excuse or reduce the culpability of Respondent’s conduct.

Patrick Monette-Shaw opposed the inclusion of the definitions of “exculpatory information” and “mitigating information.” He stated that when there is a referral, the Commission is not supposed to do a new investigation. He suggested removing those two definitions. He stated that the Task Force already conducts an investigation.

Bruce Wolfe stated that the Supervisor of Records may refer to the Attorney General or District Attorney, according to Sunshine Ordinance section 67.21(d).

Allyson Washburn stated that the characterizations of the Task Force’s referrals should be changed. She stated that the regulations should be clear in ensuring that the public records are produced, regardless of the reason what it was not.

The Commission discussed adding “supervisor of records” to the definition of “complaint.” Chairperson Hur stated that he was wary of adding something without fully vetting it. He stated that the Commission would be legislating something that has never occurred. Vice-Chairperson Studley suggested creating a list of issues to discuss with the Task Force when they are able to meet again.

The Commission discussed the proposed definition of “public records.” Chairperson Hur stated that section 67.20(b) appears narrower than the proposed definition. He stated that the Commission could use section 67.20(b) or the suggested definition. Commissioner Renne asked whether it was not better to have the definition be as broad as possible. He suggested adding the provisions of section 67.24 to the proposed definition with an “and/or.”

**Motion 12-09-24-1 (Studley/Hayon): Moved, seconded, and passed (4-0; Liu excused) that the Ethics Commission adopt decision points 1-1 and 1-2, as amended.**

#### DECISION POINTS 2-1(A) – 2-1(G):

##### Decision Point 2-1(A)

Chairperson Hur suggested clarifying Chapter Two, Section I.A.2(a)-(c). The Commissioners discussed possible language and agreed to the following language: “(a) willful violations by City officials and employees (other than elected officials or department heads), or (b) non-willful violations by elected officials, department heads, City officials, or City employees.” Commissioner Renne also suggested striking “made from the header on page 4 of the draft regulations.

Decision Point 2-1(B)

Chairperson Hur suggested the possibility of setting the matter to a special meeting. Vice-Chairperson Studley suggested allowing the option of having the hearing at the next scheduled meeting. Commissioner Renne suggested that the language suggests a two-step procedure. He suggested the following language: "Scheduling a Show Cause Hearing After Receipt of a Task Force referral. The Commission shall place the matter on the calendar for the next regular Ethics Commission meeting, provided that such could be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act. At that meeting, the matter will be set for the show cause hearing as provided in section II below."

Decision Point 2-2(C)

Commissioner Renne questioned the inclusion of this section. The Commissioners agreed to strike it.

Decision Point 2-2(D)

Chairperson Hur expressed concern of the use of a non-lawyer representative. He stated that it seemed odd for the representative to be a member of the Task Force. He stated that having a Task Force member represent one of the parties that in a matter that the Task Force adjudicated seemed unusual. He stated that the Commission would be able to take statements from an attorney as the party's word, but any non-attorney representative would not have the same obligation. Vice-Chairperson Studley expressed interest in hearing from the public regarding this issue. Commissioner Hayon asked why the complainant and respondent would not appear. Commissioner Renne suggested requirement a representative present a written authorization from the party s/he represents.

Decision Point 2-2(E)

Vice-Chairperson Studley stated that this section is unbalanced as it is written. Chairperson Hur suggested striking subsections (a)-(d) and Commissioner Studley agreed. Commissioner Renne asked whether the subsections are intended as affirmative defenses. The Commissioners agreed that the subsections were not necessary and removing them would not limit the affirmative defenses.

Commissioner Renne asked about the hearing officer's findings. Investigator/Legal Analyst Garrett Chatfield stated that the suggestion for a hearing office would be that one Commissioner would ask questions and handle procedural matters, but that it would not involve having a separate hearing with only one Commissioner present. He stated that the full Commission would deliberate. The Commission agreed to remove language referencing a hearing officer from the draft proposal.

Decision Point 2-1(F)

Commissioner Renne asked whether the monetary penalty from the general fund would be moved from one agency to another. He asked whether it would be appropriate for the individual to pay a fine for a willful violation. He stated that the Commission should order the Respondent to produce the documents.

Chairperson Hur stated that he doubted whether the Commission would be able to impose penalties in these cases. DCA Shen stated that, in terms of penalties against individuals, the Commission would have to meet and confer obligations with any affected employees' unions. He stated that, regarding moving money between departments in the general fund, the City Attorney's recommendation would be to implement that small piece of the proposal via ordinance rather than these regulations. He stated that moving money occurs through the budget process and is legislative. He stated that the Commission would need the authorization of an ordinance rather than a regulation. The Controller's Office also suggested an ordinance, as it would entail deappropriating money from one department to another. Commissioner Studley stated that, if the Commission is able to impose penalties on an individual, rather than a department, then that could be a tool to use. She stated that she would prefer increasing the amount of money taken from a department. Commissioner Renne suggested taking action against the supervisors of violators who are City employees or officials. The Commissioners agreed to strike section F.1(b).

Chairperson Hur presented a hypothetical where the Respondent presented a defense that s/he acted on the advice of counsel and the Commission finds that the defense lacks merit. He asked staff how the Commission would resolve that matter. Mr. Chatfield stated that the Ordinance allows the individual to go to court, as the Commission would not be able to initiate a court action on his or her behalf.

#### Public Comment:

Bruce Wolfe stated that most of the members of the public are eager to help and not trying to be adversarial. He stated that the Commission cannot readjudicate matters already considered by the Task Force. He stated that the Task Force has its own legal counsel and a full hearing process. He stated that the Task Force is asking for enforcement, not to repeat everything.

Chairperson Hur stated that, during the joint meeting in April 2012, this was the compromise position reached. He stated that the Commission would not do everything again, but the Commission would not merely enforce what came from the Task Force.

Patrick Monette-Shaw stated that the draft does not reference City managers. He stated that if a Respondent is wrong, then s/he should be found in violation without exceptions.

Peter Warfield stated that none of the documents referenced during the discussion were mentioned in the agenda. He stated that there was no copy of the Sunshine Ordinance in the room, which he stated was quite stunning and shocking. He stated that readjudication is not the best approach. He asked the Commission to define a show cause hearing. He also suggested adding removal from office as a penalty.

Richard Knee suggested adding some time limitations in the hearing procedure for both types of hearings, so the parties may prepare accordingly. He asked whether the differences in the number of votes required (in Decision Points 2-2E and 3-3B) were intentional. He also asked what would happen if the Respondent failed to comply with the Commission's order.

Dr. Derek Kerr stated that the term “complaint” runs throughout the document and is fundamentally different from an order and referral from the Task Force. He stated that equating a complaint with an Order of Determination is the same as treating a citizen complaint the same way as the careful deliberations of the Task Force. He stated that members of the Task Force should not represent parties in these matters.

Paul Currier stated that the Commission should hear from the Task Force. He stated that the Civil Grand Jury suggested a monetary penalty. He stated that Supervisors committed official misconduct and the case was referred to the District Attorney for criminal prosecution.

Hope Johnson agreed with the decision to delete the hearing officers. He stated that the Executive Director should not be readjudicating behind the scenes. She stated that the parties sometimes do not send knowledgeable representatives to the Task Force. She also agreed with eliminating section E. She suggested allowing the Commission to take a further action, as in the Jewelle Gomez matter, as opposed to the drafted language at the end of F.1. She stated that she does not support readjudication. She stated that the Commission has no authority to overturn Task Force findings.

David Pilpel suggested making the language in section B consistent with the other language and reference the Brown Act and Public Records Act. He stated that the hearing should be before the entire Commission. He stated that this issue here is a section 67.30(c) referral and he is unsure whether the Commission is authorized to order production of documents. He also stated that if the Commission determines that the act or omission was willful, then official misconduct attaches to that and that is omitted from subsection F.

Allen Grossman stated that the hearing cannot be a readjudication of what was heard at the Task Force. He stated that the Respondent is given the opportunity to provide an exemption. He stated that the full Commission should hear these cases and a hearing officer would be contrary to the spirit of the Sunshine Ordinance.

D. Bowler stated that it is impossible for her to understand what the Commission is doing. She stated that she cannot make sense of the intended changes.

A member of the public stated that there has been no enforcement for 17 years. He stated that the regulations do not track section 67.34, which includes other managerial employees. He stated that the citizen has does his or her part when filing the complaint. He stated that, after that, it is up to the Task Force to advise departments of enforcement of the law.

Chairperson Hur stated that the Commission has been attempting to draft regulations that work and comport with its view and take into account what the Task Force feels is necessary. He stated that it has been a complicated process. He stated that the Commission should move through the rest of the draft to identify issues and concerns, but that the Commission should revise the draft before taking action.

#### DECISION POINTS 3-1(A) – 3-3(D)

Commissioner Renne stated that there is no language when the public hearing should be heard and suggested removing references to a hearing officer.

Vice-Chairperson Studley suggested amending Chapter III.C on page 14, with respect to elected officials. The Commission agreed to add language to inform the Mayor.

Commissioner Renne also suggested striking the subparagraphs referring to monetary penalties.

Chairperson Hur asked about the declaration contemplated in the report and recommendation referenced in Chapter III, Section 3.C (under Public Hearing). Mr. Chatfield stated that an elected official may submit a statement that way. He also stated that staff could use a declaration from a witness.

#### DECISION POINTS 4-1(A) – 4-2:

Regarding the conclusion of a hearing, Chairperson Hur suggested allowing the Commission to deliberate on the matter on a different day and to add language stating the Commission would announce the “date of decision,” if there is an oral decision.

Chairperson Hur also suggested striking subsection L, which referred to proceedings under Charter section 15.105. He stated that the Mayor would have the burden to prove official misconduct in a separate proceeding. DCA Shen stated that there is a disconnect between the Sunshine Ordinance and the Charter on the subject of members of boards and commissions.

#### Public Comment:

David Pilpel suggested adding “section I.B.3, if applicable” on page 12 of the memo, after “section I.B.2.” He asked how the designation, referred to in Chapter Four, Section I, D, would be made known to the public. He asked whether the Commission had the authority to add the statute of limitations.

Hope Johnson stated that the Commission did not have the authority to create the statute of limitations. She stated that the Commission should reconsider that item.

Peter Warfield referenced a letter Hope Johnson wrote and stated that he hoped that she had forwarded it to the Commission. He stated that a member of the public may not be aware that a Commission had not comply with the requirements in the Brown Act, for example, until long after the proposed statute of limitations. He disagreed with the proposed limit.

Patrick Monette-Shaw stated that the volume of records requested should not be a mitigating factor. He stated that the Civil Grand Jury had recommended a monetary penalty. He stated that the statute of limitations clause should be removed.

Paul Currier stated that there is no statute of limitations in the Sunshine Ordinance and there is a freedom to access. He stated that misdemeanors are going on and meetings are not properly agendized.



Allen Grossman stated that there are two provisions of Sunshine Ordinance section 67.34 – one defines official misconduct and the other discusses willful violations. He opposed the proposed provision which stated that “internal notes taken...shall not be disclosed until the Commission has issued its final decision.” He stated that there is no basis for keeping any of those records confidential.

**IV. Consideration of a draft follow-up letter to the Mayor regarding Jewelle Gomez, President of the San Francisco Library Commission.**

Executive Director St. Croix stated that the Commissioners had expressed interest in discussing a follow-up letter to the Mayor. Commissioner Studley stated that the Commission should send a letter and Commissioner Renne agreed. Commissioner Renne added the following language to the final paragraph of the draft letter: “Alternatively, I ask you to advise the Commission of the reasons why you decline to take any action with respect to Ms. Gomez’s conduct.” Commissioner Hur suggested striking the first sentence of the third paragraph and adding Commissioner Renne’s suggested language.

Public Comment:

Patrick Monette-Shaw agreed with Commissioner Renne’s suggestion. He suggested two other additions: 1) asking for an explanation from Ms. Gomez why she thought her behavior after the July 11, 2011 Ethics Commission meeting was befitting an appointed official; and 2) asking the Mayor why he has not taken any action on Ms. Gomez when two ethical bodies found a violation, which is in stark contrast to what he did to Sheriff Mirkarimi.

A member of the public stated that there have been questions about the pending charges against the Sheriff and whether it was related to his office and whether he acted in his official capacity. He stated that Ms. Gomez’s conduct occurred while she was in the office to which she was appointed. He played an audio recording from a device and stated that Ms. Gomez had filed a fraudulent police report.

Peter Warfield supported the Commission in sending the letter to the Mayor, although he expressed that it should have come sooner. He also agreed with the language suggested by Commissioner Renne. He stated that Ms. Gomez’s behavior was so shocking that others stated they were intimidated and did not make public comment because of it. He also mentioned Ms. Gomez’s attempt to hit Mr. Monette-Shaw.

**Motion 12-09-24-2 (Hayon/Studley): Moved, seconded, and passed (4-0; Liu excused) that the Ethics Commission send a follow-up letter to the Mayor regarding Ms. Gomez, as amended.**

The Commission took a break from 9:19 PM and resumed the meeting at 9:30 PM.

**V. Consideration of Ethics Complaint Nos. 08110816 and 09110816, alleging that Executive Director John St. Croix and Tonia Lediju of the Controller’s Office willfully violated the Sunshine Ordinance.**



Before the Commission began discussion or consideration of this item, Commissioner Renne requested to be excused from any of the proceedings with agenda items 5, 6, or 7. He stated that his wife, both as City Attorney and in private capacity, had been closely related to Laguna Honda Hospital. He stated that he was unaware of the contents or subject matter of the complaints. He stated that he had not spoken with any member of the staff and not looked at any documents regarding the complaints. He offered to leave the meeting room or be excused from the balance of the meeting. Chairperson Hur had no objection to his request.

**Motion 12-09-24-3 (Studley/Hayon): Moved, seconded, and passed (3-0; Liu and Renne excused) that the Ethics Commission grant Commissioner Renne's request to be excused from the remainder of the meeting.**

Public Comment:

David Pilpel stated that if Commissioner Renne may act without bias, then he would appreciate Commissioner Renne's participation on this item. He stated that, in general, he would prefer that Commissioners participate in meetings.

Patrick Monette-Shaw thanked Commissioner Renne.

[Commissioner Renne was excused from the meeting at 9:34 PM.]

Chairperson Hur stated that he had received a memorandum from Mr. Monette-Shaw and had not had an opportunity to review it. DCA Shen stated that a complaint was filed against Commission staff and Oakland made a recommendation to the Commission and the full Ethics Commission then deliberated that matter. Chairperson Hur apologized to the parties, including Ms. Lediju, and suggested continuing the matter.

PUBLIC COMMENT:

Dr. Derek Kerr stated that DCA Jerry Threet erred in his memo because there were two whistleblower complaints. He stated that this complaint relates to documents and not misappropriations.

Peter Warfield noted the time and that the public is only now learning something that was known at the beginning of the meeting. He expressed his disappointment that this could not have been announced at the beginning of the meeting.

Patrick Monette-Shaw stated that Supervisor Weiner will be perturbed that employees' time was wasted. He asked whether the San Jose DCA was going to attend. He stated that these matters should not be considered by the Commission, so that there is no perception of a conflict of interest. He requested that the cases be transferred to another jurisdiction.

Allen Grossman stated that the City Attorney provided a precedent and he hopes that information is available to the public as well.

Hope Johnson asked the Commission to send these matters to a different Ethics Commission. She stated that there could be a conflict of interest.

David Pilpel stated that these two items are properly before the Commission. He stated that, until there are separate regulations for complaints alleging violations of the Sunshine Ordinance, the Commission has to use the current regulations.

Chairperson Hur clarified that he only realized that he would need more time to review Mr. Monette-Shaw's memorandum when the Commission took its break during this meeting.

**VI. Discussion and vote regarding closed session action and deliberations.**

Public Comment:

**Motion 12-09-24-4 (Studley/Hayon): Moved, seconded, and passed (3-0; Liu and Renne excused) that the Ethics Commission move into closed session.**

The Ethics Commission entered into closed session at 9:51 PM.

[Chairperson Hur, Vice-Chairperson Studley, Commissioner Hayon, DCA Givner, Executive Director St. Croix, Deputy Executive Director Ng, and Ms. Argumedo were in attendance during the closed session.]

The Ethics Commission returned to open session at 10:14 PM.

**VII. Discussion and vote regarding closed session action and deliberations.  
(Discussion and possible action.)**

**Motion 12-09-24-5 (Studley/Hayon): Moved, seconded, and passed (3-0; Liu and Renne excused) that it is in the best interests of the public not to disclose its closed session deliberations re: anticipated litigation.**

Public Comment:

None.

Chairperson Hur announced that the Commission entered into a settlement in the matter of Alex Tourk, of Ground Floor Public Affairs, in the amount of \$6,000. He stated that the Order would be posted on the Commission's website the following day. He also announced that the Commission decided that a separate matter will be referred to another agency that will handle it.

David Pilpel asked whether the letter of referral will be released. DCA Givner stated that the matter is confidential under the Charter. He stated that the Commission's referral is confidential and will continue to be so unless and until the Commission issues a determination of probable cause.

**VIII. Minutes of the Commission's regular meeting of July 23, 2012 and special meetings of September 11, 2012.**

Chairperson Hur stated that the Commission would take no action on the minutes during this meeting.

Public Comment:

None.

**IX. Executive Director's Report.**

Executive Director St. Croix stated that improvements have been made on the Commission's website. He stated that there are new ways to access information on the website and that searches will now compose reports that are better for the users.

Vice-Chairperson Studley asked about the issue raised earlier about the SEI filers. She stated that whether there could be more follow-up for people who fail to file, as there are hundreds of other people who are able to file on time. Mr. St. Croix stated that non-filers had been referred to the FPPC. He stated that this was not being done and he had failed to follow up. He stated that the letters to late filers should have been mailed in August, but they had not been sent. He took responsibility for not ensuring that the letters had been mailed.

Chairperson Hur thanked Commission staff for doing an excellent job in posting the documents relating to the Sheriff proceedings quickly.

Public Comment:

David Pilpel stated that Steven Massey should be congratulated as he does many things for the Commission. He stated that information on non-filers should be provided monthly or quarterly. He suggested providing this information for those not paying fines or fees, as well as those who have not filed SEIs, campaign consultant or lobbyist filings. He also noted that an incumbent on the College Board who is running for re-election remains on the BDR list. He suggested changing the law so that candidates would not be able to be re-elected if s/he owes the City money.

**X. Items for future meetings.**

Public Comment:

None.

**XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

None.

**XII. Adjournment.**

The meeting was adjourned at 10:29 PM.

Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF SPECIAL MEETING**

**October 22, 2012 5:30 P.M.**

**and AGENDA**

**Room 400 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

GOVERNMENT  
DOCUMENTS DEPT

OCT 17 2012

SAN FRANCISCO  
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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Discussion and possible action on Ethics Complaint Nos. 08110816 and 09110816, alleging that Executive Director John St. Croix and Tonia Lediju of the Controller's Office willfully violated the Sunshine Ordinance. These matters were referred to the San Jose City Attorney's Office for investigation and review. At this meeting, the Commission will deliberate on the San Jose City Attorney's Office's recommendations regarding the complaints. (Attachments: September 6, 2012 memoranda from San Jose Sr. Deputy City Attorney Lisa Herrick re Ethics Complaints No. 08-110816 and 09-110816; Responses from Complainant re Ethics Complaints No. 08-110816 and 09110816.)
- IV. Discussion and possible action on draft amendments to the Campaign Finance Reform Ordinance (CFRO) to impose disclosure requirements on "draft committees" that support the candidacy of an identifiable person for City elective office who has not declared as a candidate. (Attachments: August 27, 2012 staff report and draft amendments.)
- V. Discussion and possible action on Annual Report for Fiscal Year 2011-2012. The Commission will discuss the contents of a draft annual report, suggest and vote on possible amendments, and possibly adopt the report for submission to the Mayor and Board of Supervisors. (Attachment: draft annual report for FY 11-12.)
- VI. Discussion and possible action on minutes of the Commission's regular meetings of July 23, 2012 and September 24, 2012, and special meeting of September 11, 2012. (Attachments: draft minutes of the July 23, September 11 and September 24, 2012 meetings.)
- VII. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report

covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: ED report.)

VIII. Discussion on items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

IX. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in a meeting, please contact the Ethics Commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline is 4:00 p.m. the previous Friday. Late requests will be honored, if possible. Services available on request include the following: American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes. Please contact the Ethics Commission (415) 252-3100 to make arrangements for a disability-related modification or accommodation.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

**KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE** (Chapter 67 of the San Francisco Administrative Code): Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

**FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE**, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: [SOTF@SFGOV.ORG](mailto:SOTF@SFGOV.ORG). Copies of the Sunshine Ordinance can be

obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

**Lobbyist Registration and Reporting Requirements:** Individuals who influence or attempt to influence local policy or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 – 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100, fax (415) 252-3112; and website: [www.sfgov.org/ethics](http://www.sfgov.org/ethics).

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## *Memorandum*

**TO:** SAN FRANCISCO  
ETHICS COMMISSION

**FROM:** LISA HERRICK  
Sr. Deputy City Attorney

**SUBJECT:** Referral from Sunshine  
Ordinance Task Force re  
Ethics Complaint No. 08-110816

**DATE:** September 6, 2012

### INTRODUCTION

The San Francisco Sunshine Ordinance Task Force ("Sunshine Task Force") referred Ethics Complaint No. 08-110816 to the Ethics Commission finding violations of the San Francisco Sunshine Ordinance against, among others, the Executive Director of the Ethics Commission. Because the Executive Director of the Ethics Commission is named as a respondent in the Complaint, I have been asked to review and investigate the Complaint consistent with the Ethics Commission Regulations for Investigations and Enforcement Proceedings.<sup>1</sup>

### SUMMARY OF COMPLAINT

On March 6, 2011, Patrick Monette-Shaw filed a complaint with the Sunshine Task Force alleging that the San Francisco Controller and Ethics Commission violated Sections 67.24<sup>2</sup>, 67.26<sup>3</sup> and 67.34<sup>4</sup> of the Sunshine Ordinance by failing to provide records in response to an Immediate Disclosure Request for "any and all written correspondence between the City Controller's Office and the Ethics Commission related to the Whistleblower Complaint filed by Drs. Derek Kerr and Maria Rivero regarding the Laguna Honda Hospital Patient Gift Fund during the period of February 1, 2010 and December 31, 2010."

### PROCEEDINGS BEFORE SUNSHINE ORDINANCE TASK FORCE

The Sunshine Task Force heard this matter on April 26, 2011.

In an Order of Determination dated June 14, 2011, the Task Force found that the Controller's Office violated Section 67.25<sup>5</sup> of the Sunshine Ordinance for untimely response to the Immediate Disclosure Request. The Task Force also found that the Ethics Commission and Controller's Office each violated Section 67.26 of the Sunshine Ordinance by not keeping withholding to a minimum and Section 67.27<sup>6</sup> of the Sunshine Ordinance for failing to justify the withholding. The Task Force ordered the Controller's Office and Ethics Commission to release the records requested within 5 business days and appear before the Compliance and Amendments Committee on July 12, 2011.

On July 12, 2011, the Compliance and Amendments Committee of the Task Force recommended that the Task Force find that Controller's Office staff and Ethics Commission staff violated Sunshine Ordinance Section 67.34 for willful failure to disclose the records requested.

On July 26, 2011, the Task Force adopted the recommendation of the Compliance and Amendments Committee to find Controller's Office staff and Ethics Commission staff in willful violation of the Order of Determination pursuant to Section 67.34 of the Sunshine Ordinance and San Francisco City Charter Section 15.105(e).<sup>7</sup> The Task Force also voted to forward the matter to the District Attorney and the Ethics Commission for enforcement and forward a copy of the referral letter to Mayor Ed Lee and the San Francisco Civil Grand Jury.

On August 15, 2011, the Task Force referred its Order of Determination issued June 14, 2011 to the Ethics Commission pursuant to Sunshine Ordinance Sections 67.21<sup>8</sup> and 67.30.<sup>9</sup> The Task Force's August 15 letter also provided notification of willful failure and official misconduct findings against Controller's Office staff and Ethics Commission staff for failure to comply with the June 14 Order of Determination.

#### **REFERRALS TO OTHER AGENCIES**

On August 25, 2011, Garrett Chatfield, Investigator with the Ethics Commission, referred the Task Force's Order of Determination to Andrew Shen, Deputy City Attorney, San Francisco City Attorney's Office and Marc Katz, Assistant District Attorney, San Francisco District Attorney's Office.

On August 31, 2011, Marc Katz informed Mr. Chatfield:

At this time, our office is not pursuing a criminal investigation concerning this complaint. Your letter notes that the Ethics Commission is "in discussions with various outside agencies to determine if the matter ... can be referred to another agency." Please provide us with the contact information for the person/agency that will handle the investigation. We will ask that agency to inform us if they uncover evidence of criminal conduct.

On September 8, 2011, Mr. Shen wrote to John St. Croix, Executive Director of the Ethics Commission, to inform him that the City Attorney's Office would not investigate Complaint No. 08-110816.

#### **REVIEW OF THE RECORD**

I reviewed the entire file in this matter, including the Complaint and all memoranda and correspondence related to the proceedings before the Sunshine Task Force. I determined that it was not necessary for me to conduct additional interviews.

## LEGAL ANALYSIS

### A. Records from the Controller's Office

San Francisco City Charter Section F1.110(b) provides:

Notwithstanding any other provision of this Charter, or any ordinance or regulation of the City and County of San Francisco, and except to the extent required by state or federal law, all drafts, notes, preliminary reports of Controller's benchmark studies, audits, investigations and other reports shall be confidential.

In addition, Section F1.107(c) of the Charter requires in part:

The Board of Supervisors shall enact and maintain an ordinance protecting the confidentiality of whistleblowers, and protecting City officers and employees from retaliation for filing a complaint with, or providing information to, the Controller, Ethics Commission, District Attorney, City Attorney or a City department or commission about improper government activity by City officers and employees.

The Charter therefore makes all drafts, notes and preliminary reports of the Controller's investigations confidential unless required to be disclosed under state or federal law; the identity of whistleblowers is also confidential under the Charter as well as Section 4.123(a) of the San Francisco Campaign and Governmental Conduct Code which implements the Charter provision.<sup>10</sup>

No federal law exists that requires records related to whistleblower complaints and investigations to be disclosed. Moreover, California Government Code Section 53087.6<sup>11</sup> makes records of an investigative audit confidential and the California Public Records Act exempts disclosure of records exempted or prohibited pursuant to state law.<sup>12</sup> Finally, although Drs. Kerr and Rivero apparently submitted a "Waiver of Confidentiality Request for our LHH Gift Fund Whistleblower Complaints", the conduct of investigative audits is governed by the City's Charter and state law.

Since there is no federal or state law that would compel disclosure of whistleblower information and the Sunshine Ordinance is specifically preempted by the City's Charter, the information requested by Mr. Monette-Shaw cannot be disclosed.

### B. Records from the Ethics Commission

Appendix C3.699-13(a) of the San Francisco City Charter provides in part:

If the commission, upon the sworn complaint or on its own initiative, determines that there is sufficient cause to conduct an investigation, it shall investigate alleged violations of this charter or City ordinances relating to campaign finance, lobbying, conflicts of interest and governmental ethics.... The investigation shall

be conducted in a confidential manner. Records of any investigation shall be considered confidential information to the extent permitted by state law. Any member or employee of the commission or other person who, prior to a determination concerning probable cause, discloses information about any preliminary investigation, except as necessary to conduct the investigation, shall be deemed guilty of official misconduct. The unauthorized release of confidential information shall be sufficient grounds for the termination of the employee or removal of the commissioner responsible for such release.

Sections 6276<sup>13</sup> and 6276.32<sup>14</sup> of the California Public Records Act exempt from disclosure "official information." California Evidence Code 1040 defines "official information" as follows:

(a) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

The City may refuse to disclose information acquired in confidence by a public employee. As discussed above, although Drs. Kerr and Rivero apparently submitted a "Waiver of Confidentiality Request for our LHH Gift Fund Whistleblower Complaints", the conduct of investigative audits is governed by the City's Charter and state law and so neither physician is authorized to waive the privilege.

The City's Charter deems confidential records of investigations by the Ethics Commission to the extent provided by state law. Since state law protects "official information" and the Sunshine Ordinance is preempted by the City's Charter, the information requested by Mr. Monette-Shaw cannot be disclosed.

## RECOMMENDATION

For the reasons explained above, the Sunshine Ordinance Task Force did not apply the law correctly. I recommend that the Commission dismiss Complaint 08-110816, in which the Sunshine Task Force found violations of Sections 67.25 67.26, 67.27 and 67.34 of the Sunshine Ordinance.

Please note that one member of the Commission may cause this Complaint to be calendared for consideration by the full Commission in an open session at the next Commission meeting, which is scheduled for September 24, 2012.<sup>15</sup> A request for consideration by the full Commission must be received by staff to the Ethics Commission by Wednesday, September 19, 2012 (no fewer than five days before the date of the Commission meeting) so that staff may comply with the applicable notice and agenda requirements.<sup>16</sup>

RICHARD DOYLE  
City Attorney

By:   
LISA HERRICK  
Sr. Deputy City Attorney

For questions, please contact Lisa Herrick, Sr. Deputy City Attorney, at 408-535-1900.

<sup>1</sup> I am a Senior Deputy City Attorney for the San Jose Office of the City Attorney. One of my first assignments when I joined the City Attorney's Office in August 2006 was to staff the Sunshine Reform Task Force, which met for two years. Over that period, the Task Force made a number of recommendations about increasing transparency in meetings and access to documents in San Jose.

I also advise City officials and employees on the Brown Act, California Public Records Act, Political Reform Act and the City's ethics ordinances.

I advise the City Clerk on all matters related to the Clerk's Office, including elections. I also staff the Elections Commission. I have handled litigation matters involving the City's Campaign Finance and Lobbying ordinances.

Before joining the City Attorney's Office, I worked for the County of Santa Clara for nearly 5 years; one of my assignments was to advise the Registrar of Voters. I started my law career in a private law firm where I handled general litigation matters for ten years.

<sup>2</sup> Sec. 67.24. Public Information That Must Be Disclosed.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

(i) Sex, age and ethnic group;

(ii) Years of graduate and undergraduate study, degree(s) and major or discipline;

(iii) Years of employment in the private and/or public sector;

(iv) Whether currently employed in the same position for another public agency.

(v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.



(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

(5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

(d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

(1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);

(2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

(3) The identity of a confidential source;

(4) Secret investigative techniques or procedures;

(5) Information whose disclosure would endanger law enforcement personnel; or

(6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.



(e) Contracts, Bids and Proposals

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(2) Notwithstanding the provisions of this subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

(i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or

(iii) any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the city attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

(f) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other

services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance.

**<sup>3</sup> Sec. 67.26. Withholding Kept to a Minimum.**

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

**<sup>4</sup> Sec. 67.34. Willful Failure Shall Be Official Misconduct.**

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

**<sup>5</sup> Sec. 67.25. Immediacy of Response.**

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

**<sup>6</sup> Sec. 67.27. Justification of Withholding.**

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

**<sup>7</sup> SEC. 15.105. SUSPENSION AND REMOVAL.**

(a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and any member of the Airport Commission, Asian Art Commission, Civil Service Commission, Commission on the Status of Women, Golden Gate Concourse Authority Board of Directors, Health Commission, Human Services Commission, Juvenile Probation Commission, Municipal Transportation Agency Board of Directors, Port Commission, Public Utilities Commission, Recreation and Park Commission, Fine Arts Museums Board of Trustees, Taxi Commission, War Memorial and Performing Art Center Board of Trustees, Board of Education or Community College Board is subject to suspension and removal for official misconduct as provided in this section. Such officer may be suspended by the Mayor and the Mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. Upon such suspension, the Mayor shall immediately notify the Ethics Commission and Board of Supervisors thereof in writing and the cause thereof, and shall present written charges against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their next regular meetings following such suspension, and shall immediately furnish a copy of the same to such officer, who shall have the right to appear with counsel before the Ethics Commission in his or her defense. The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a

recommendation as to whether the charges should be sustained. If, after reviewing the complete record, the charges are sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission, the suspended officer shall thereby be reinstated.

(b) BUILDING INSPECTION COMMISSION, PLANNING COMMISSION, BOARD OF APPEALS, ELECTIONS COMMISSION, ETHICS COMMISSION, AND ENTERTAINMENT COMMISSION. Members of the Building Inspection Commission, the Planning Commission, the Board of Appeals, the Elections Commission, the Ethics Commission, and the Entertainment Commission may be suspended and removed pursuant to the provisions of subsection (a) of this section except that the Mayor may initiate removal only of the Mayor's appointees and the appointing authority shall act in place of the Mayor for all other appointees.

(c) REMOVAL FOR CONVICTION OF A FELONY CRIME INVOLVING MORAL TURPITUDE.

(1) Officers Enumerated in Subsections (a) and (b).

(A) An appointing authority must immediately remove from office any official enumerated in subsections (a) or (b) upon:

(i) a court's final conviction of that official of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the official was convicted warrants removal.

(B) For the purposes of this subsection, the Mayor shall act as the appointing authority for any elective official.

(C) Removal under this subsection is not subject to the procedures in subsections (a) and (b) of this section.

(2) Other Officers and Employees.

(A) At will appointees. Officers and employees who hold their positions at the pleasure of their appointing authority must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(B) For cause appointees. Officers and employees who by law may be removed only for cause must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(3) Penalty for Failure to Remove. Failure to remove an appointee as required under this subsection shall be official misconduct.

(d) DISQUALIFICATION.

(1) (A) Any person who has been removed from any federal, state, County or City office or employment upon a final conviction of a felony crime involving moral turpitude shall be ineligible for election or appointment to City office or employment for a period of ten years after removal.

(B) Any person removed from any federal, state, County or City office or employment for official misconduct shall be ineligible for election or appointment to City office or employment for a period of five years after removal.

(2) (A) Any City department head, board, commission or other appointing authority that removes a City officer or employee from office or employment on the grounds of official misconduct must invoke the disqualification provision in subsection (d)(1)(B) and provide notice of such disqualification in writing to the City officer or employee.

(B) Upon the request of any former City officer or employee, the Ethics Commission may, after a public hearing, overturn the application of the disqualification provision of subsection (d)(1)(B) if: (i) the decision that the former officer or employee engaged in official misconduct was not made after a hearing by a court, the Board of Supervisors, the Ethics Commission, an administrative body, an administrative hearing officer, or a labor arbitrator; and (ii) if the officer or employee does not have the right to appeal his or her restriction on holding future office or employment to the San Francisco Civil Service Commission.

(e) OFFICIAL MISCONDUCT. Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office.

<sup>8</sup> Sec. 67.21. Process for Gaining Access to Public Records; Administrative Appeals.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when



not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public.

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The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

**<sup>9</sup> Sec. 67.30. The Sunshine Ordinance Task Force.**

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to it an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.



(c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

(d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.

(e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance.

<sup>10</sup> **Sec. 4.123. Confidentiality Protection for Whistleblower Program Complainants and Investigations.**

(a) **WHISTLEBLOWER IDENTITY AND INVESTIGATIONS.** Every officer and employee of the City shall keep confidential: Controller

(i) The identity of any person who makes a complaint to the Whistleblower Program under Section 4.107 of this Chapter, and any information that would lead to the disclosure of the person's identity, unless the person who made the complaint provides written authorization for the disclosure.

(ii) Complaints or reports to the Whistleblower Program and information related to the investigation of the matter, including drafts, notes, preliminary reports, working papers, records of interviews, communications with complainants and witnesses, and any other materials and information gathered or prepared in the course of the investigation.

The protection of confidentiality set forth in this Section applies irrespective of whether the information was provided in writing and whether the information was provided or is maintained in electronic, digital, paper or any other form or medium.

(b) **INQUIRY REGARDING IDENTITY PROHIBITED.** In order to assure effective implementation of the provisions of this Section providing confidentiality to whistleblowers, City officers and employees may not use any City resources, including work time, to ascertain or attempt to ascertain directly or indirectly the identity of any person who has made a complaint to the Whistleblower Program, unless such person has provided written authorization for the disclosure. Nothing in this Section shall preclude an officer or employee assigned to investigate a complaint under this Chapter from ascertaining the identity of a complainant to the extent necessary to conduct the investigation.

(c) **EXCEPTIONS.** Nothing in this Section shall preclude the Controller from (i) disclosing the identity of a person or other information to the extent necessary to conduct a civil or criminal investigation or to take any enforcement action, including any action to discipline an employee or take remedial action against a contractor, or (ii) releasing information as part of a referral when referring any matter to another City department, commission, board, officer or employee, or to other governmental agencies, for investigation and possible disciplinary, enforcement or remedial action, or (iii) releasing information to the Citizens

Audit Review Board so that it may carry out its duty to provide advisory input to the Controller on the Whistleblower Program, provided that information is prepared so as to protect the confidentiality of persons making complaints and of investigations, or (iv) releasing information to inform the public of the nature of the actions taken by the Controller in the operation of the Whistleblower Program provided that information is prepared so as to protect the confidentiality of persons making complaints and of investigations.

**<sup>11</sup> Government Code Section 53087.6.**

(a) (1) A city, county, or city and county auditor or controller who is elected to office may maintain a whistleblower hotline to receive calls from persons who have information regarding fraud, waste, or abuse by local government employees.

(2) A city, county, or city and county auditor or controller who is appointed by, or is an employee of, a legislative body or the government agency that is governed by the city, county, or city and county, shall obtain approval of that legislative body or the government agency, as the case may be, prior to establishing the whistleblower hotline.

(b) The auditor or controller may refer calls received on the whistleblower hotline to the appropriate government authority for review and possible investigation.

(c) During the initial review of a call received pursuant to subdivision (a), the auditor or controller, or other appropriate governmental agency, shall hold in confidence information disclosed through the whistleblower hotline, including the identity of the caller disclosing the information and the parties identified by the caller.

(d) A call made to the whistleblower hotline pursuant to subdivision (a), or its referral to an appropriate agency under subdivision (b), may not be the sole basis for a time period under a statute of limitation to commence. This section does not change existing law relating to statutes of limitation.

(e) (1) Upon receiving specific information that an employee or local government has engaged in an improper government activity, as defined by paragraph (2) of subdivision (f), a city or county auditor or controller may conduct an investigative audit of the matter. The identity of the person providing the information that initiated the investigative audit shall not be disclosed without the written permission of that person, unless the disclosure is to a law enforcement agency that is conducting a criminal investigation. If the specific information is in regard to improper government activity that occurred under the jurisdiction of another city, county, or city and county, the information shall be forwarded to the appropriate auditor or controller for that city, county, or city and county.

(2) Any investigative audit conducted pursuant to this subdivision shall be kept confidential, except to issue any report of an investigation that has been substantiated, or to release any findings resulting from a completed investigation that are deemed necessary to serve the interests of the public. In any event, the identity of the individual or individuals reporting the improper government activity, and the subject employee or employees shall be kept confidential.

(3) Notwithstanding paragraph (2), the auditor or controller may provide a copy of a substantiated audit report that includes the identities of the subject employee or employees and other pertinent information concerning the investigation to the appropriate appointing authority for disciplinary purposes. The substantiated audit report, any subsequent investigatory materials or information, and the disposition of any resulting disciplinary proceedings are subject to the confidentiality provisions of applicable local, state, and federal statutes, rules, and regulations.

(f) (1) For purposes of this section, "employee" means any individual employed by any county, city, or city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, or political subdivision that falls under the auditor's or controller's jurisdiction.

(2) For purposes of this section, "fraud, waste, or abuse" means any activity by a local agency or employee that is undertaken in the performance of the employee's official duties, including activities deemed to be outside the scope of his or her employment, that is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct.

<sup>12</sup> California Government Code Section 6254(k).

<sup>13</sup> California Government Code Section 6276.

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

<sup>14</sup> California Government Code Section 6276.32.

Narcotic addict outpatient revocation proceeding, confidentiality of reports, Section 3152.5, Welfare and Institutions Code.

Narcotic and drug abuse patients, confidentiality of records, Section 11845.5, Health and Safety Code.

Native American graves, cemeteries and sacred places, records of, subdivision (r), Section 6254.

Notary public, confidentiality of application for appointment and commission, Section 8201.5.

Nurse, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 2770.12, Business and Professions Code.

Obscene matter, defense of scientific or other purpose, confidentiality of recipients, Section 311.8, Penal Code.

Occupational safety and health investigations, confidentiality of complaints and complainants, Section 6309, Labor Code.

Occupational safety and health investigations, confidentiality of trade secrets, Section 6322, Labor Code.

Official information acquired in confidence by public employee, disclosure of, Sections 1040 and 1041, Evidence Code.

Oil and gas, confidentiality of proposals for the drilling of a well, Section 3724.4, Public Resources Code.

Oil and gas, disclosure of onshore and offshore exploratory well records, Section 3234, Public Resources Code.

Oil and gas, disclosure of well records, Section 3752, Public Resources Code.

Oil and gas leases, surveys for permits, confidentiality of information, Section 6826, Public Resources Code.

Oil spill feepayer information, prohibition against disclosure, Section 46751, Revenue and Taxation Code.

Older adults receiving county services, providing information between county agencies, confidentiality of, Section 9401, Welfare and Institutions Code.

Organic food certification organization records, release of, Section 110845, Health and Safety Code.

Osteopathic physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2369, Business and Professions Code.

<sup>15</sup> Ethics Commission Regulations for Investigations and Enforcement Proceedings § VI.A.

<sup>16</sup> Ethics Commission Regulations for Investigations and Enforcement Proceedings § VI.D.



## *Memorandum*

**TO:** SAN FRANCISCO  
ETHICS COMMISSION

**FROM:** LISA HERRICK  
Sr. Deputy City Attorney

**SUBJECT:** Referral from Sunshine  
Ordinance Task Force re  
Ethics Complaint No. 09-110816

**DATE:** September 6, 2012

### **INTRODUCTION**

The San Francisco Sunshine Ordinance Task Force ("Sunshine Task Force") referred Ethics Complaint No. 09-110816 to the Ethics Commission finding violations of the San Francisco Sunshine Ordinance and California Public Records Act against the Ethics Commission. The referral from the Sunshine Task Force also provided notification of willful failure and official misconduct findings against the Executive Director of the Commission. Since this matter involves the Executive Director of the Ethics Commission, I have been asked to review and investigate the Complaint consistent with the Ethics Commission Regulations for Investigations and Enforcement Proceedings.<sup>1</sup>

### **SUMMARY OF COMPLAINT**

On March 6, 2011, Patrick Monette-Shaw filed a complaint with the Sunshine Task Force alleging that the Ethics Commission violated Sections 67.24<sup>2</sup>, 67.26<sup>3</sup> and 67.34<sup>4</sup> of the Sunshine Ordinance by failing to provide records in response to an Immediate Disclosure Request for:

1. Any and all written communication(s) between the Ethics Commission and the City Controller's Office (including the City Controller, the City Services Auditor, and/or the Controller's Whistleblower Program) regarding this complaint.
2. The Ethics Commission investigative file(s) regarding the patient gift fund complaint.
3. Any closing memo(s) authored by the Ethics Commission staff regarding this LHH patient gift fund complaint.

### **PROCEEDINGS BEFORE SUNSHINE ORDINANCE TASK FORCE**

The Sunshine Task Force heard this matter on April 26, 2011.

In an Order of Determination dated June 7, 2011, the Task Force found that the Ethics Commission violated Section 67.26 of the Sunshine Ordinance and Government Code

Section 6253 of the California Public Records Act by not disclosing the records requested. The Task Force ordered the Ethics Commission to release the records requested within 5 business days and appear before the Compliance and Amendments Committee on June 14, 2011.

On June 14, 2011, not enough members of the Compliance and Amendments Committee were present to reach a quorum and the Committee could not meet.

At the next meeting of the Compliance and Amendments Committee on July 12, 2011, the Committee recommended that the Task Force find that Ethics Commission staff violated Sunshine Ordinance Section 67.34 for willful failure to disclose the records requested.

On July 26, 2011, the Task Force adopted the recommendation of the Compliance and Amendments Committee to find Ethics Commission staff in willful violation of the Order of Determination pursuant to Section 67.34 of the Sunshine Ordinance and San Francisco City Charter Section 15.105(e).<sup>5</sup> The Task Force also voted to forward the matter to the District Attorney and the Ethics Commission for enforcement and forward a copy of the referral letter to Mayor Ed Lee and the San Francisco Civil Grand Jury.

On August 15, 2011, the Task Force referred its Order of Determination issued June 7, 2011 to the Ethics Commission pursuant to Sunshine Ordinance Sections 67.21<sup>6</sup> and 67.30.<sup>7</sup> The Task Force's August 15 letter also provided notification of willful failure and official misconduct findings against Ethics Commission staff for failure to comply with the June 7 Order of Determination.

#### REFERRALS TO OTHER AGENCIES

On August 25, 2011, Garrett Chatfield, Investigator with the Ethics Commission, referred the Task Force's Order of Determination to Andrew Shen, Deputy City Attorney, San Francisco City Attorney's Office and Marc Katz, Assistant District Attorney, San Francisco District Attorney's Office.

On August 31, 2011, Marc Katz informed Mr. Chatfield:

At this time, our office is not pursuing a criminal investigation concerning this complaint. Your letter notes that the Ethics Commission is "in discussions with various outside agencies to determine if the matter ... can be referred to another agency." Please provide us with the contact information for the person/agency that will handle the investigation. We will ask that agency to inform us if they uncover evidence of criminal conduct.

On September 8, 2011, Mr. Shen wrote to John St. Croix, Executive Director of the Ethics Commission, to inform him that the City Attorney's Office would not investigate Complaint No. 09-110816.



## **REVIEW OF THE RECORD**

I reviewed the entire file in this matter, including the Complaint and all memoranda and correspondence related to the proceedings before the Sunshine Task Force. I determined that it was not necessary for me to conduct additional interviews.

## **LEGAL ANALYSIS**

Appendix C3.699-13(a) of the San Francisco City Charter provides in part:

If the commission, upon the sworn complaint or on its own initiative, determines that there is sufficient cause to conduct an investigation, it shall investigate alleged violations of this charter or City ordinances relating to campaign finance, lobbying, conflicts of interest and governmental ethics.... The investigation shall be conducted in a confidential manner. Records of any investigation shall be considered confidential information to the extent permitted by state law. Any member or employee of the commission or other person who, prior to a determination concerning probable cause, discloses information about any preliminary investigation, except as necessary to conduct the investigation, shall be deemed guilty of official misconduct. The unauthorized release of confidential information shall be sufficient grounds for the termination of the employee or removal of the commissioner responsible for such release.

Sections 6276<sup>8</sup> and 6276.32<sup>9</sup> of the California Public Records Act exempt from disclosure "official information." California Evidence Code 1040 defines "official information" as follows:

(a) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.



The City may refuse to disclose information acquired in confidence by a public employee. Although Drs. Kerr and Rivero apparently submitted a "Waiver of Confidentiality Request for our LHH Gift Fund Whistleblower Complaints", the conduct of investigative audits is governed by the City's Charter and state law and so neither physician is authorized to waive the privilege.

The City's Charter deems confidential records of investigations by the Ethics Commission to the extent provided by state law. Since state law protects "official information" and the Sunshine Ordinance is preempted by the City's Charter, the information requested by Mr. Monette-Shaw cannot be disclosed.

### RECOMMENDATION

For the reasons explained above, the Sunshine Ordinance Task Force did not apply the law correctly. I recommend that the Commission dismiss Complaint 09-110816, in which the Sunshine Task Force found violations of Sections 67.25 67.26, 67.27 and 67.34 of the Sunshine Ordinance.

Please note that one member of the Commission may cause this Complaint to be calendared for consideration by the full Commission in an open session at the next Commission meeting, which is scheduled for September 24, 2012.<sup>10</sup> A request for consideration by the full Commission must be received by staff to the Ethics Commission by Wednesday, September 19, 2012 (no fewer than five days before the date of the Commission meeting) so that staff may comply with the applicable notice and agenda requirements.<sup>11</sup>

RICHARD DOYLE  
City Attorney

By:   
LISA HERRICK  
Sr. Deputy City Attorney

For questions, please contact Lisa Herrick, Sr. Deputy City Attorney, at 408-535-1900.

<sup>1</sup> I am a Senior Deputy City Attorney for the San Jose Office of the City Attorney. One of my first assignments when I joined the City Attorney's Office in August 2006 was to staff the Sunshine Reform Task Force, which met for two years. Over that period, the Task Force made a number of recommendations about increasing transparency in meetings and access to documents in San Jose.

I also advise City officials and employees on the Brown Act, California Public Records Act, Political Reform Act and the City's ethics ordinances.

I advise the City Clerk on all matters related to the Clerk's Office, including elections. I also staff the Elections Commission. I have handled litigation matters involving the City's Campaign Finance and Lobbying ordinances.

Before joining the City Attorney's Office, I worked for the County of Santa Clara for nearly 5 years; one of my assignments was to advise the Registrar of Voters. I started my law career in a private law firm where I handled general litigation matters for ten years.

<sup>2</sup> **Sec. 67.24. Public Information That Must Be Disclosed.**

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

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(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

- (i) Sex, age and ethnic group;
  - (ii) Years of graduate and undergraduate study, degree(s) and major or discipline;
  - (iii) Years of employment in the private and/or public sector;
  - (iv) Whether currently employed in the same position for another public agency.
  - (v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.
- (2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.
- (3) The job description of every employment classification.
- (4) The exact gross salary and City-paid benefits available to every employee.
- (5) Any memorandum of understanding between the City or department and a recognized employee organization.
- (6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.
- (7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.
- (d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

- (1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
- (2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

- (3) The identity of a confidential source;
- (4) Secret investigative techniques or procedures;
- (5) Information whose disclosure would endanger law enforcement personnel; or
- (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

(e) Contracts, Bids and Proposals

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(2) Notwithstanding the provisions of this subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

- (i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;
- (ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or
- (iii) any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the city

attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

(f) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance.

<sup>3</sup> **Sec. 67.26. Withholding Kept to a Minimum.**

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

<sup>4</sup> **Sec. 67.34. Willful Failure Shall Be Official Misconduct.**

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.



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<sup>5</sup> SEC. 15.105. SUSPENSION AND REMOVAL.

(a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and any member of the Airport Commission, Asian Art Commission, Civil Service Commission, Commission on the Status of Women, Golden Gate Concourse Authority Board of Directors, Health Commission, Human Services Commission, Juvenile Probation Commission, Municipal Transportation Agency Board of Directors, Port Commission, Public Utilities Commission, Recreation and Park Commission, Fine Arts Museums Board of Trustees, Taxi Commission, War Memorial and Performing Art Center Board of Trustees, Board of Education or Community College Board is subject to suspension and removal for official misconduct as provided in this section. Such officer may be suspended by the Mayor and the Mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. Upon such suspension, the Mayor shall immediately notify the Ethics Commission and Board of Supervisors thereof in writing and the cause thereof, and shall present written charges against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their next regular meetings following such suspension, and shall immediately furnish a copy of the same to such officer, who shall have the right to appear with counsel before the Ethics Commission in his or her defense. The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained. If, after reviewing the complete record, the charges are sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission, the suspended officer shall thereby be reinstated.

(b) BUILDING INSPECTION COMMISSION, PLANNING COMMISSION, BOARD OF APPEALS, ELECTIONS COMMISSION, ETHICS COMMISSION, AND ENTERTAINMENT COMMISSION. Members of the Building Inspection Commission, the Planning Commission, the Board of Appeals, the Elections Commission, the Ethics Commission, and the Entertainment Commission may be suspended and removed pursuant to the provisions of subsection (a) of this section except that the Mayor may initiate removal only of the Mayor's appointees and the appointing authority shall act in place of the Mayor for all other appointees.

(c) REMOVAL FOR CONVICTION OF A FELONY CRIME INVOLVING MORAL TURPITUDE.

(1) Officers Enumerated in Subsections (a) and (b).

(A) An appointing authority must immediately remove from office any official enumerated in subsections (a) or (b) upon:

(i) a court's final conviction of that official of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the official was convicted warrants removal.

(B) For the purposes of this subsection, the Mayor shall act as the appointing authority for any elective official.

(C) Removal under this subsection is not subject to the procedures in subsections (a) and (b) of this section.

(2) Other Officers and Employees.

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(A) At will appointees. Officers and employees who hold their positions at the pleasure of their appointing authority must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(B) For cause appointees. Officers and employees who by law may be removed only for cause must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(3) Penalty for Failure to Remove. Failure to remove an appointee as required under this subsection shall be official misconduct.

(d) DISQUALIFICATION.

(1) (A) Any person who has been removed from any federal, state, County or City office or employment upon a final conviction of a felony crime involving moral turpitude shall be ineligible for election or appointment to City office or employment for a period of ten years after removal.

(B) Any person removed from any federal, state, County or City office or employment for official misconduct shall be ineligible for election or appointment to City office or employment for a period of five years after removal.

(2) (A) Any City department head, board, commission or other appointing authority that removes a City officer or employee from office or employment on the grounds of official misconduct must invoke the disqualification provision in subsection (d)(1)(B) and provide notice of such disqualification in writing to the City officer or employee.

(B) Upon the request of any former City officer or employee, the Ethics Commission may, after a public hearing, overturn the application of the disqualification provision of subsection (d)(1)(B) if: (i) the decision that the former officer or employee engaged in official misconduct was not made after a hearing by a court, the Board of Supervisors, the Ethics Commission, an administrative body, an administrative hearing officer, or a labor arbitrator; and (ii) if the officer or employee does not have the right to appeal his or her restriction on holding future office or employment to the San Francisco Civil Service Commission.

(e) OFFICIAL MISCONDUCT. Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office.



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**<sup>6</sup> Sec. 67.21. Process for Gaining Access to Public Records; Administrative Appeals.**

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

<sup>7</sup> **Sec. 67.30. The Sunshine Ordinance Task Force.**

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of

whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to it an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.

(c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

(d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.

(e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance.

<sup>8</sup> California Government Code Section 6276.

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

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<sup>9</sup> **California Government Code Section 6276.32.**

Narcotic addict outpatient revocation proceeding, confidentiality of reports, Section 3152.5, Welfare and Institutions Code.

Narcotic and drug abuse patients, confidentiality of records, Section 11845.5, Health and Safety Code.

Native American graves, cemeteries and sacred places, records of, subdivision (r), Section 6254.

Notary public, confidentiality of application for appointment and commission, Section 8201.5.

Nurse, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 2770.12, Business and Professions Code.

Obscene matter, defense of scientific or other purpose, confidentiality of recipients, Section 311.8, Penal Code.

Occupational safety and health investigations, confidentiality of complaints and complainants, Section 6309, Labor Code.

Occupational safety and health investigations, confidentiality of trade secrets, Section 6322, Labor Code.

Official information acquired in confidence by public employee, disclosure of, Sections 1040 and 1041, Evidence Code.

Oil and gas, confidentiality of proposals for the drilling of a well, Section 3724.4, Public Resources Code.

Oil and gas, disclosure of onshore and offshore exploratory well records, Section 3234, Public Resources Code.

Oil and gas, disclosure of well records, Section 3752, Public Resources Code.

Oil and gas leases, surveys for permits, confidentiality of information, Section 6826, Public Resources Code.

Oil spill feepayer information, prohibition against disclosure, Section 46751, Revenue and Taxation Code.

Older adults receiving county services, providing information between county agencies, confidentiality of, Section 9401, Welfare and Institutions Code.

Organic food certification organization records, release of, Section 110845, Health and Safety Code.

Osteopathic physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2369, Business and Professions Code.

<sup>10</sup> Ethics Commission Regulations for Investigations and Enforcement Proceedings § VI.A.

<sup>11</sup> Ethics Commission Regulations for Investigations and Enforcement Proceedings § VI.D.

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September 19, 2012

Benedict Hur  
Chair  
San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

**Re: Rebuttal to Recommendation to Dismiss:  
Ethics Complaint # 08-110816 (SOTF #11013)**

Dear Mr. Hur,

I am in receipt of the September 6, 2012 memo to the San Francisco Ethics Commission submitted by Ms. Lisa Herrick, a Senior Deputy City Attorney in the San Jose City Attorney's Office enclosing her recommendation to dismiss my Ethics complaint #08-110816. Her review of the record, facts in the case, and relevant law is flawed. I believe she incorrectly applied the law to reach her recommendation to dismiss this complaint.

Ms. Herrick does not address and appears to have ignored salient facts in this case. For instance, she appears to have ignored my April 10, 2011 rebuttal entitled "*Re: #11013: Rebuttal to Ethics and Controller's Responses – Executive Summary*" on pages 57 and 58 in the packet of materials titled "SOTF 11013 April 26 2011 Packet.pdf" submitted for her review. My April 10 rebuttal asserted §C3.699-13 **applies only to the Ethics Laws**, not to the public records Access Laws:

As I noted in my initial March 6 complaints (#11013 and #11014): As noted in the *Allen Grossman vs. San Francisco Ethics Commission*<sup>1</sup> case, §C3.699-13 "**applies only to the Ethics Laws**," not to the public records Access Laws [emphasis added].

Nowhere does Herrick ever address in her Recommendation that the Ethics Commission, City Controller, and the Sunshine Task Force have each been repeatedly informed that §C3.699-13

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<sup>1</sup> *Allen Grossman vs. San Francisco Ethics Commission*, "Memorandum of Points and Authorities in Support of Verified Petition for Peremptory Writ of Mandate," October 5, 2009, page 4.

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does not apply in this case, and Herrick presents no rationale why §C3.699-13 should.

Just as the anonymous analysis<sup>2</sup> of the misconduct proceedings against Sheriff Mirkarimi noted that law professors like to say that “hard cases make bad law,” Herrick’s *Recommendations* expose views not well thought out and not clearly presented. The *Legal Analysis* Ms. Herrick prepared is deficient for a number of reasons, relying on misinterpretation of relevant citations (one hopes that first-year law students wouldn’t rely on Herrick’s flawed analysis). Here’s where she went wrong:

### **§C3.699-13**

As I noted in my initial SOTF Complaint on March 6, 2011:

Charter Appendix §C3.699-13(a) applies only to “campaign finance, lobbying, conflicts of interest and governmental ethics,” **not** to whistleblower complaints. The term “whistleblower” doesn’t appear at all in Charter §C3.699-13(a). ... Charter §C3.699-13(a) is not a State law, and this Charter section only applies to campaign finance, lobbying, conflicts of interest and governmental ethics cases.

I also noted on March 6, 2011:

As noted in the *Allen Grossman vs. San Francisco Ethics Commission* case, §C3.699-13 “**applies only to the Ethics Laws**,” not to the public records Access Laws<sup>3</sup> [emphasis added].

§C3.699-13 states “The Charter states plainly that the Commission shall investigate alleged violations of the Ethics Laws. ... Nowhere in the Charter is this investigative mandate extended to violations of the Access Laws.”<sup>4</sup>

Narrow construction of Section C3.699-13 compels the conclusion that [§C3.699-13] **applies only to the Ethics Laws** that it names, and not to the Access Laws about which it is silent<sup>5</sup>.

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<sup>2</sup> Anonymous, “San Francisco Ethics Commission Official Misconduct Proceeding against Sheriff Ross Mirkarimi” *Thoughts on Final Hearing — August 16, 2012*,” dated September 9, 2012, page 1.

<sup>3</sup> *Allen Grossman vs. San Francisco Ethics Commission*, “Memorandum of Points and Authorities in Support of Verified Petition for Peremptory Writ of Mandate,” October 5, 2009, page 4.

<sup>4</sup> *Allen Grossman vs. San Francisco Ethics Commission*, “Memorandum of Points and Authorities in Support of Verified Petition for Peremptory Writ of Mandate,” October 5, 2009, page 3.



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Section C3.699-13, which mandates investigations and provides that investigation records be kept confidential, applies only to the Ethics Laws<sup>5</sup>. Therefore, Massey's claim that all Ethics investigations are confidential is incorrect, since §C3.699-13 — which mandates investigations and provides that investigation records be kept confidential — only applies to Ethics Laws.

In footnote 2 on page 3 of Deputy City Attorney Jerry Threet's April 20, 2011 instructional memo to the SOTF regarding Sunshine Complaint #11013, Threet cites Dr. Kerr's *Complaint for Damages* filed in Superior Court, but Threet wrongly claims that Kerr's whistleblower complaint regarding LHH's patient gift fund had alleged a conflict of interest. Threet is confounding — mixing up — Kerr's gift fund whistleblower complaint, in which he did not allege conflicts of interest, with two other completely unrelated whistleblower complaints in which Kerr may have raised conflict-of-interest allegations.

Because the gift fund whistleblower complaint — the subject of my complaints before the SOTF — did not raise conflict of interest allegations, Appendix C3-699-13 does not apply, and should not have been used as a rationale by Ethics, or the City Controller, or Mr. Threet to bring the investigation within Charter Appendix C3.699-13.

Further, the initial gift fund complaint filed by Drs. Kerr and Rivero asserted violation or activity *other than* a violation of "local campaign finance, lobbying, conflicts of interest or governmental ethics laws"; therefore, because their complaint did not involve campaign finance, lobbying,

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<sup>5</sup> *Allen Grossman vs. San Francisco Ethics Commission*, "Memorandum of Points and Authorities in Support of Verified Petition for Peremptory Writ of Mandate," October 5, 2009, page 4.

<sup>6</sup> *Allen Grossman vs. San Francisco Ethics Commission*, "Memorandum of Points and Authorities in Support of Verified Petition for Peremptory Writ of Mandate," October 5, 2009, page 4.



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conflicts of interest, or ethics laws, the investigation of their complaint should not have been conducted pursuant to procedures in Charter Section C3.699-13. An investigation may have emulated those procedures, but the confidentiality provision does not apply. That removes any “trumping” aspect of the Charter §C3.699-13 from the analysis — leaving relevant provisions of the Sunshine Ordinance to apply.

Herrick all but ignores Campaign and Governmental Conduct Code §4.105. **§4.105(b)** states:

- (b) **ETHICS COMMISSION COMPLAINT PROCEDURES.** The Ethics Commission shall investigate complaints filed under this Section that allege violations of **local campaign finance lobbying, conflicts of interest and governmental ethics laws** pursuant to the procedures specified in Charter Section C3.699-13 and the regulations adopted thereunder. [Emphasis added.]

However, **§4.105(a)** states:

- (a) **COMPLAINTS.** Any person may file a complaint with the Ethics Commission, Controller, District Attorney or City Attorney, or a written complaint with the complainant's department alleging that a City officer or employee has engaged in improper government activity by: **violating local campaign finance, lobbying, conflicts of interest or governmental ethics laws, regulations or rules**; violating the California Penal Code by misusing City resources; creating a specified and substantial danger to public health or safety by failing to perform duties required by the officer or employee's City position; or abusing his or her City position to advance a private interest. [Emphasis added.]

Note the difference. Complaints can be filed under §4.105(a) alleging many different violations or improper activities. But, under §4.105(b) not all of them are investigated “pursuant to procedures specified in Charter Section C3.699-13 and the regulations adopted thereunder.”

Herrick then proceeded to assert that the California Public Records Act exempts from disclosure “official information.” She cites California Evidence Code 1040 that defines “official information”:

§1040. (a) As used in this section, “official information” means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered. [Emphasis added.]

As far as anyone can tell, there has been no showing or other indication — neither by Herrick nor by anyone else — of what there is (or may be) in the Ethics Commission’s LHH patient gift fund investigative file that warrants the application of any “official information” privilege to the entire file. The only way this privilege could be applied is by looking at each claimed piece of “information acquired in confidence” by the investigator and testing whether each piece satisfies the public interest test in subdivision §1040(b)(2). The privilege can’t be applied to the whole file, *carte blanche*.

Invocation of the “*Interests of Justice*” exemption under the Official Information exemption has been ruled<sup>7</sup> by the California Supreme Court to be the same as the *Public Interest Balancing* test — which is clearly prohibited by the Sunshine Ordinance. Since Sunshine Ordinance §67.24(i)

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<sup>7</sup> *CBS, Inc. v Block*, 42 Cal. 3d 646.656 (1986).

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eliminates that test as an exemption, this means that Evidence Code 1040 is not an available exemption to any San Francisco respondent, including not an available exemption to either the Ethics Commission, the City Controller's Office, or to Ms. Lediju and Mr. St. Croix.

Herrick all but ignores that no "official information" exemption is available to the Ethics Commission or the City Controller, because Sunshine Ordinance §67.24(i) provides:

"Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance."

Ms. Herrick also ignores the "*Summary of the California Public Records Act 2004*"<sup>8</sup> published by the California Attorney General's Office, which reads, in relevant part, that the Attorney General has advised that only traditional penal and law enforcement agencies may use this evidence code exemption:

#### **Investigative Records**

Records of complaints, preliminary inquiries to determine if a crime has been committed, and full-scale investigations, as well as closure memoranda are investigative records.

In addition, records that are not inherently investigatory may be covered by the exemption where they pertain to an enforcement proceeding that has become concrete and definite.

Investigative and security records created for **law enforcement, correctional or licensing purposes** also are covered by the exemption from disclosure. The term "**law enforcement agency**" refers to **traditional criminal law enforcement agencies**.

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<sup>8</sup> "*Summary of the California Public Records Act 2004*," accessed on-line September 15, 2012 at [http://ag.ca.gov/publications/summary\\_public\\_records\\_act.pdf](http://ag.ca.gov/publications/summary_public_records_act.pdf), Section XII-A, *Investigative Records*.

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Re: **Rebuttal to Recommendation to Dismiss: Ethics Complaint # 08-110816 (SOTF #11013)**

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Records created in connection with administrative investigations unrelated to licensing are not subject to the exemption.

State law, as such, does not apply at all to the Ethics Commission's "investigation" files. CPRA §6254(f) provides, in part:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(f) **Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes...**

The Ethics Commission is not a "local agency" whose "investigatory" files are compiled "for correctional, law enforcement or licensing purposes."

It is clear, then, that Section 6254(f) — which creates an exemption for investigatory records — does not apply to any official or agency whose investigatory files are not "compiled by any state or local agency for correctional, law enforcement, or licensing purposes." This includes the Ethics Commission and the City Controller's Office, neither of which have correctional, law enforcement or licensing functions, and are not law enforcement agencies.

After all, the courts have limited the §6254(f) exemption to offices and agencies that have police investigative power, which the Ethics Commission and City Controller's Office do not have.

The Ethics Commission and the City Controller are just other agencies, as far as CPRA is concerned.

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In addition, Ms. Herrick ignored my previous testimony that §67.24(g) of the Sunshine Ordinance specifically indicates City agencies and employees may NOT assert CPRA Section 6255 or similar provisions as the basis for withholding documents. §67.24(h) of the Sunshine Ordinance prohibits the use of the “deliberative process” exemption of CPRA as an exemption for withholding. And §67.24(i) of the Sunshine Ordinance prohibits claiming an exemption for withholding based on whether the public interest in withholding information outweighs the public interest in disclosure.

Since Ms. Herrick’s conclusion appears to be based solely on the application of Evidence Code §1040, her conclusions and recommendation do not appear to be valid.

Moreover, Ms. Herrick — like Deputy City Attorney Jerry Threet before her — cleverly tried to assert (by turning State law inside out), that the City Charter deems “confidential” records of investigations by the Ethics Commission provided by state law. Herrick asserts that City Charter Section F1.110(b) provides:

“... except to the extent required by state or federal law,” drafts, notes, preliminary reports of Controller's benchmark studies, audits, investigations and other reports shall be confidential:

Importantly, the central issue — which Mr. Threet’s April 20, 2011 instructional memo tried to confuse — is not whether State or federal law requires disclosure of the records requested; if State or federal law requires disclosure, San Francisco’s City Charter may not make them confidential and the records must be produced. Threet noted CPRA makes most government

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documents public records, and if no CPRA exemption applies, the records are not subject to confidentiality protections of the Charter and must be disclosed.

The issue that Threet and Herrick confound is whether State law requires or permits disclosure, when in fact the controlling issue is whether State or federal law forbids or prohibits disclosure. Herrick and Threet all but ignore the provisions in 1040(b)(1) that disclosure must be forbidden by an Act of Congress or a State statute (see page 5 of this Rebuttal).

The “official information privilege” applies to disclosure of information exempted or prohibited by State or federal law, or by an act of the Congress of the United States, not what is “permitted” for disclosure. When Herrick noted that “The City’s Charter deems confidential records of investigations by the Ethics Commission to the extent provided by state law,” what she (and Mr. Threet) wrongly ignored was that these records may be confidential and subject to the official information privilege exemption only when disclosure is forbidden by State or federal law, and there is no State or federal law that actually prohibits such disclosure.

Herrick wrongly noted that “there is no federal or state law that ... compels disclosure of whistleblower information,” but again she ignores that the issue is not whether there are laws to compel disclosure, but whether there are laws that forbid disclosure, and indeed, there are no laws that prohibit release of the information I have requested.

Since the City Charter cannot make nondisclosable what is disclosable under State law, Ms. Herrick’s recommendation to dismiss this complaint is without merit.

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It is not the Sunshine Ordinance Task Force that did not apply the law correctly, as Ms. Herrick wrongly asserts. It is Ms. Herrick, herself, who has incorrectly applied the law in her analysis and recommendation to dismiss my Complaint # 08-110816.

Any communications between the Ethics Commission and any other agencies — the focus of this complaint — is not “official information” at all, which must be disclosed.

Sincerely,

[Signed]

Patrick Monette-Shaw

cc: Lisa Herrick, Senior Deputy City Attorney, City of San Jose





# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

JAMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: August 27, 2012

To: Members, Ethics Commission

From: John St. Croix, Executive Director  
By: Mabel Ng, Deputy Executive Director

A handwritten signature in black ink, likely belonging to Mabel Ng, is written over the "By:" line.

Re: Proposed legislation to impose disclosure requirements on draft committees

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## Background

At its August 8, 2011 meeting, the Ethics Commission considered the status of two campaign committees, one called the "Draft Ed Lee Committee," which registered as a primarily formed committee; and another called "Progress for All," which initially registered as a general purpose committee. "Progress for All" funded the "Run, Ed, Run" campaign, which focused on convincing then interim-Mayor Ed Lee to run for election as Mayor in the November 2011 election. Because news reports indicated that the committee functioned as a primarily formed committee that existed solely to support Mayor Lee's potential candidacy,<sup>1</sup> the Executive Director instructed Progress for All to refile as a primarily formed committee.

Mayor Lee was not listed on the ballot, nor had he received any contributions or made any expenditures in support of his election. In other words, he did not meet the definition of being a "candidate" under the law. See Cal. Gov't Code § 82007. And because the Commission determined that Mayor Lee was not a "candidate" at that time, there was no basis to require Progress for All to refile as a primarily formed committee.

In making its determination, however, the Commission instructed staff to propose amendments to the City's campaign finance laws that would require a committee promoting an individual as a candidate to the voters to file reports and disclose its activities with the Commission as a primarily formed committee. This memo presents staff's recommendations to create such a requirement.

Both general purpose committees and primarily formed committees are recipient committees that generally file semi-annual statements due January 31 and July 31 to disclose campaign activities of the past six months. Local committees also file pre-

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<sup>1</sup> A primarily formed committee is a committee formed or existing primarily to support or oppose, (a) a single candidate, (b) a single measure, (c) a group of specific candidates being voted upon in the same city, county, or multicounty or state election, or (d) two or more measures being voted upon in the same city, county, multicounty, or state election. See Calif. Gov't Code § 82047.5.

election reports and late contribution and late independent expenditure reports, if applicable. The distinguishing feature of a primarily formed committee, however, is that it must file in the jurisdiction where the candidate or measure it is primarily formed to support or oppose normally files its campaign statements. See 2 Cal. Code Regs § 18247.5. Thus, a primarily formed committee supporting a candidate for City elective office would be required to file with the Ethics Commission; a general purpose committee that makes expenditures to support a candidate for City elective office need not be required to file with the Ethics Commission.

The proposed changes are to the Campaign Finance Reform Ordinance (CFRO), San Francisco Campaign and Governmental Conduct Code section 1.100 et seq. (C&GC Code). The Board of Supervisors (Board) may amend the CFRO if (a) the amendment furthers the purposes of the CFRO, (b) the Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members; (c) the proposed amendment is available for public review at least 30 days before the amendment is considered by the Board or any committee of the Board; and (d) the Board approves the proposed amendment by at least a two-thirds vote of all its members. C&GC Code § 1.103.

## Discussion

The proposed amendments establish a new section in the CFRO, section 1.160, which has two subsections, one setting forth definitions and the other the filing requirements.

### 1. Proposed section 1.160(a)

Section 1.160(a) contains three definitions and a provision that the Ethics Commission may adopt regulations further defining those terms.

The term “draft committee” under section 1.160(a)(1) is perhaps the most critical definition here. Under staff’s proposal, any person, group of persons, or entity that receives at least \$1,000 in contributions or makes \$1,000 in expenditures to support the election of an identifiable person who is *not* yet a candidate will be subject to reporting requirements. The language that describes “identifiable person” in the proposal generally tracks language that defines “candidate” under state law. Under the legislation, a committee that receives contributions or makes expenditures to support the election of *an identifiable person who has not yet qualified as a candidate* will have the same filing obligations as a primarily formed committee that receives contributions or makes expenditures to support a declared candidate. The “draft committee” must register as a committee and file reports disclosing contributions and expenditures during set time periods, just like other primarily formed committees that support candidates.

The term “support” is defined as any public actions or statements encouraging or urging an identifiable person to declare as a candidate for City elective office.

The term “primarily formed committee” is as defined in California Government Code section 82047.5, which is: “a committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose any of the following:

(a) A single candidate.

- (b) A single measure.
- (c) A group of specific candidates being voted upon in the same city, county, or multicounty election.
- (d) Two or more measures being voted upon in the same city, county, multicounty, or state election.<sup>2</sup>

#### **Decision Point 1**

Shall the Commission approve the proposed new language in section 1.160(a) of the CFRO, as set forth on page 1, lines 13-24 of the draft amendments?

#### **2. Proposed section 1.160(b)**

Section 1.160(b) sets forth the filing requirements for the draft committees. Under the proposal, a draft committee would be subject to the same state or local filing requirements that apply to a primarily formed committee that supports a candidate seeking the same City elective office. Generally speaking, this means that the draft committee must file its statement of organization as a primarily formed committee. Thereafter, the draft committee would file the FPPC Form 460 on a periodic basis, as required by law, to disclose contributions received and expenditures made.

#### **Decision Point 2**

Shall the Commission approve the proposed new language in section 1.160(b) of the CFRO, as set forth on page 1, line 25 – page 2, line 7 of the draft amendments?

\* \* \*

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

#### **§ 18247.5. Primarily Formed Committees.**

- (a) A “primarily formed” committee, as defined in Section 82047.5 and this regulation, is a recipient committee under Section 82013(a) that supports or opposes a single candidate or measure, or a specific group of measures or local candidates on the same ballot. (In contrast, a “general purpose” committee, defined in Section 82027.5 and Regulation 18227.5, supports multiple candidates or ballot measures.)
- (b) Filing. Under Section 84215, a primarily formed committee files in the jurisdiction where the candidate(s) or measure(s) it is primarily formed to support or oppose normally file(s) their campaign statements.
- (c) Special Requirements for Primarily Formed Committees. In addition to other applicable provisions of the Act and regulations, a primarily formed committee must automatically file preelection statements under Section 84200.5 and 84200.7 or 84200.8; must comply with the committee name and identification of donors requirements of Sections 84107, 84503 and 84504, if supporting or opposing a ballot measure; must comply with the committee name rules of Regulation 18402(c)(3) if supporting or opposing candidate(s); must file online 90-day reports under Section 85309 if supporting or opposing a state ballot measure; must file 16-day reports of contributions received under Section 82036; and is subject to mandatory audit if a state committee.

<sup>2</sup> Fair Political Practices Commission Regulation 18247.5 provides further information about primarily formed committees. The regulation is set forth at the end of this memo.

(d) Definition. For purposes of Section 82047.5, a recipient committee under Section 82013(a) is considered to be "formed or existing primarily to support or oppose" a candidate or measure if:

(1) The committee is created for the purpose of or is involved in running the principal campaign for or against the candidate(s) or measure(s) as listed in subdivision (d)(4) below; or

(2) The committee's primary purpose and activities are to support or oppose candidate(s) or measure(s) as listed in subdivision (d)(4) below; or

(3) The committee makes more than 70 percent of its total contributions and expenditures on all candidates and measures (not including administrative overhead) on those specific candidate(s) or measure(s) as listed in subdivision (d)(4) below, during the time period specified in subdivision (e)(3).

(4)(A) A single candidate. A committee formed or existing primarily to support or oppose a single candidate includes a committee that makes contributions and expenditures for a particular candidate and against that candidate's opponent(s).

(B) A single measure.

(C) A group of specific candidates being voted upon in the same city, county, or multicounty election.

(D) Two or more measures being voted upon in the same city, county, multicounty, or state election.

(e) Review.

(1) A committee that has reason to know it is close to triggering the applicable threshold for changing status because its spending is concentrated on candidate(s) or measure(s) as listed in subparagraphs (d)(4)(A), (B), (C) or (D), shall determine whether it is primarily formed quarterly at the end of March, June, September and December.

(2) Newly organized committees.

(A) A committee that files its initial statement of organization within six months of an election in connection with which the committee makes contributions and expenditures shall determine whether it is primarily formed at the end of each month prior to the election unless the committee has not made contributions and/or expenditures of \$1,000 or more to support or oppose candidates or measures during that month.

(B) A committee that files its initial statement of organization within six months of a statewide primary or general election or within 30 days after a declaration calling a special election for a state elective office or measure and makes at least \$25,000 in independent expenditures to support or oppose a state candidate or state measure(s) as listed in subparagraphs (d)(4)(A), (B), or (D), is presumed to be, and shall report as, a primarily formed committee. This presumption can be rebutted when the committee's contributions and expenditures on multiple candidates or measures in different jurisdictions or elections demonstrate that it is not primarily formed and the committee may amend its statement of organization to identify itself as a general purpose committee pursuant to Regulation 18227.5.

(3) For purposes of determining whether it is primarily formed under subdivision (d)(3), a committee shall count contributions and expenditures made to support or oppose candidates or measures during whichever of the following time periods most accurately reflects the current and upcoming activities of the committee:

(A) The immediately preceding 24 months; or

(B) The current two-year period, beginning with January 1 of an odd-numbered year and ending with December 31 of the following even-numbered year.

(f) File as Primarily Formed through the Election. A committee that is or becomes primarily formed within 90 days prior to an election shall maintain that status and file disclosure reports as a primarily formed committee up to the date of that election and continuing until the end of the post-election reporting period.

(g) Change of Status.

(1) Amend Statement of Organization. A recipient committee whose status changes from one jurisdiction to another, or between general purpose and primarily formed shall amend its statement of organization pursuant to Section 84103 to reflect the change. If, after filing reports with one jurisdiction, a committee changes jurisdiction, in addition to filing reports with a new filing officer, the committee must continue filing reports with the original filing officer through the end of the calendar year under Section 84215(g).

(2) An existing general purpose committee is not required to change its filing status to a primarily formed committee unless it meets the requirements in subdivision (d) and it makes at least \$100,000 of contributions and/or expenditures if supporting or opposing a state candidate or measure(s) listed in subparagraphs (d)(4)(A), (B), or (D), or at least \$10,000 of contributions and/or expenditures if supporting or opposing local candidate(s) or measure(s) listed in subparagraphs (d)(4)(A), (B), (C), or (D).

(3) Contributions from a general purpose committee to a primarily formed ballot measure or candidate committee shall not be included in the calculations required under subdivision (d)(3) if the sponsor of the general purpose committee is also a sponsor of the primarily formed committee.

(4) A committee that was primarily formed for the election of a candidate or measure, but after that election continues to exist to support or oppose different candidates or measures in the future, may remove the candidate or measure name from the committee name and change its status following the election, as long as the committee is not raising funds to pay debt from the election, except as provided in subdivision (f).

(h) Avoidance of Disclosure. A committee shall not knowingly file in an incorrect jurisdiction or as an incorrect type of committee, with the intention of avoiding the appropriate legal disclosure of campaign contributions and expenditures to the public.

Note: Authority cited: Section 83112, Government Code. Reference: Section 82047.5, Government Code.



[Campaign and Governmental Conduct Code – Disclosure for Draft Committees]

Ordinance amending the San Francisco Campaign and Governmental Conduct Code by adding section 1.160 to impose disclosure requirements on committees that support a person for City elective office who has not yet qualified as a candidate.

NOTE: Additions are single-underline italics Times New Roman;  
deletions are ~~strike-through italics Times New Roman~~;  
Board amendment additions are double-underlined;  
Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Campaign and Governmental Conduct Code is hereby amended by adding Section 1.160, to read as follows:

SEC. 1.160. DISCLOSURE REQUIREMENTS FOR DRAFT COMMITTEES.

(a) Definitions. Whenever in this Section the following words or phrases are used, they shall mean:

(1) "Draft committee" shall mean any person, group of persons or entity that either receives contributions of \$1,000 or more or makes expenditures of \$1,000 or more, in order to support the election of an identifiable person to City elective office who has not qualified as a candidate.

(2) "Support" shall mean any public actions or statements encouraging or urging an identifiable person to declare as a candidate for City elective office.

(3) "Primarily formed committee" shall be defined as set forth in the California Political Reform Act, California Government Code section 82047.5.

(4) The Ethics Commission may adopt regulations further defining these terms.

(b) Filing requirements.



1 (1) Draft committees shall file any campaign finance-related filings, reports or  
2 statements required by either state or local law for a primarily formed committee supporting a  
3 candidate seeking the City elective office for which the draft committee is supporting an identifiable  
4 person.

5 (2) If the identifiable person supported by a draft committee qualifies as a candidate  
6 for City elective office, the committee shall continue to file, as required by either state or local law, as a  
7 primarily formed committee supporting that candidate.

8 Section 2. Effective Date. This ordinance shall become effective 30 days from the  
9 date of passage.

10 Section 3. This section is uncodified. In enacting this Ordinance, the Board intends to  
11 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
12 punctuation, charts, diagrams, or any other constituent part of the Campaign and  
13 Governmental Conduct Code that are explicitly shown in this legislation as additions,  
14 deletions, Board amendment additions, and Board amendment deletions in accordance with  
15 the "Note" that appears under the official title of the legislation.

16 APPROVED AS TO FORM:  
17 DENNIS J. HERRERA, City Attorney

18 By:

19 \_\_\_\_\_  
20 ANDREW SHEN  
21 Deputy City Attorney  
22  
23  
24  
25



Note: Plain text is language from last year that will remain this year; italicized text is from last year that will be deleted this year; bold text is new this year.

## San Francisco Ethics Commission

Annual Report  
July 1, 2011 - June 30, 2012

The Ethics Commission is pleased to present this report on the activities, progress, and accomplishments of its *sixteenth* **seventeenth** year of operation to the Mayor, Board of Supervisors, and citizens of San Francisco.

Benedict Y. Hur  
Chairperson

San Francisco Ethics Commission  
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## SAN FRANCISCO ETHICS COMMISSION ANNUAL REPORT FY 2011-2012

The Ethics Commission serves the citizens of San Francisco, City employees, elected and appointed officials, and candidates for public office by enforcing the City's governmental ethics laws, providing education about their provisions, and serving as a repository for information.

The Commission acts as filing officer for campaign finance disclosure statements; audits statements for compliance with state and local laws; administers City laws regulating lobbyists and campaign consultants; investigates complaints alleging ethics law violations; serves as the filing officer for financial disclosure statements required from City officials; raises public awareness of ethics laws; researches and proposes ethics-related legislative changes; and provides ethics advice to candidates, office-holders, public officials, City and County employees and the general public.

The Commission is pledged to a high standard of excellence in government accountability, and to that end has worked not only to implement the law, but also to amend existing law or create new law that will further the principle of the voters' right to know and to ensure integrity in government decision-making and in the campaigns of those who wish to govern.

### HIGHLIGHTS OF THE SEVENTEENTH YEAR

The Commission delivered a diverse array of work products and services to the citizens of San Francisco, managing to meet its mandates during a year of budget cutbacks and other resource limitations:

- *Enforced reporting requirements for political committees, campaign consultants, lobbyists, and City officials;*
- *Conducted compliance audits of candidate and ballot measure committees;*
- *Continued the constant review of the Campaign Finance Reform Ordinance, making recommendations to the Board of Supervisors on changes to strengthen, clarify, and update campaign finance law. Drafted and adopted regulations to implement such changes;*
- *Created a ballot proposal to update and streamline the Campaign Consultant Ordinance;*
- *Conducted on-going sessions of its educational program on conflicts of interest, incompatible activities, candidate and treasurer information, campaign finance, public finance, on-line filing, lobbying, and other issues under its jurisdiction;*
- *Provided informal written or oral advice and responded to requests for informal and formal written advice letters;*
- *Added improvements to the new web site at [www.sfethics.org](http://www.sfethics.org) and continued to extend the nature and number of documents available on-line;*
- *Facilitated interested persons meetings for the general public to provide input on issues under consideration by the Commission;*
- *Conducted hearings on requests for waivers from conflict of interest laws;*

- *Considered and adopted or provided comment on legislative changes recommended by the Board of Supervisors;*
- *Responded to hundreds of citizen inquiries; and*
- *Conducted an in-depth policy analysis and followed through with a number of policy updates and changes. Set the following policy priorities for the Commission and staff:*

1. *Mayoral Public Financing Program*
2. *Campaign Consultant Ordinance*
3. *Staff Building*
4. *Education and Outreach*

- For the first time, the City began televising Ethics Commission meetings on SFGovTV. The Commission had to undergo some financial and scheduling challenges to make this happen, but was able to meet them and all Commission meetings are broadcast live when they occur. The City also airs “reruns” of Commission meetings, and all of them are available on demand at the SFGovTV web site. <http://www.sfgovtv.org/> The Commission approved changes to its Bylaws to provide that beginning in January 2012, the Commission’s regular meetings will be held on the fourth Monday of each month at 5:30 p.m. in Room 400 City Hall, and that such meetings shall be televised, except for portions of meetings that are held in closed session or otherwise required to be confidential.
- Draft amendments to the Campaign Consultant Ordinance, which were approved by the Ethics Commission in December 2010 and January 2011, were placed by the Board of Supervisors on the ballot as Proposition F in the November 8, 2011 election. The proposed amendments, which were not approved, would have:
  - adopted an electronic filing system for reporting by campaign consultants;
  - required consultants to disclose information on a monthly basis;
  - changed the economic threshold for qualification as a campaign consultant;
  - modified the registration fees;
  - eliminated the client fees; and
  - enabled the Board of Supervisors to amend the Ordinance under certain circumstances.
- In fulfilling its mandate under Charter section 15.105, the Ethics Commission this year held a hearing spanning eight meetings (three of which occurred in the new fiscal year beginning July 2012) related to the written charges of official misconduct filed by Mayor Ed Lee against Sheriff Ross Mirkarimi. The Commission addressed, among other things, procedural and evidentiary issues, the parties’ briefs, objections to evidence and witnesses, sworn declarations, direct testimony and questions raised on and responses to cross-examination, and the parties’ agreed-upon factual stipulations. At its meeting on August 16, after receiving public comment, the Commission voted to recommend to the Board of Supervisors that it sustain Counts 4 and 5 of the Amended Charges of Official Misconduct based upon Sheriff Mirkarimi’s conduct that occurred on December 31, 2011 and his subsequent conviction for false imprisonment.

- In July 2011, the Commission approved amendments to section 1.144 of the Campaign Finance Reform Ordinance (CFRO) to address the U.S. Supreme Court's decision in *Arizona Free Enterprise Club's Freedom Club PAC, et al. v. Bennett*. These amendments were introduced by Supervisors Farrell and Elsbernd at the Board of Supervisors. On September 27, 2011, the Board voted 7-3 to support the amendments. Because eight votes were needed for passage, the Board rescinded the vote. On October 4, the Board voted 6-5 in favor of the amendments. However, because eight votes were needed for passage, the amendments failed.
- At its January 23, 2012 meeting, the Commission approved by 4-0 vote new amendments to the CFRO. On January 24, 2012, Supervisors Kim, Campos, Mar and Avalos introduced these amendments as File No. 111082. The legislation amended the CFRO to establish new qualification requirements for candidates seeking public funds, set the amount of public funds that may be disbursed, delay the disbursement date of public funds, change the matching funds formula, and continue with adjustable individual expenditure ceilings that start at \$250,000 for a candidate for the Board of Supervisors and \$1,750,000 for a candidate for Mayor.
- At its special meeting on March 9, 2012, the Ethics Commission approved amendments to File No. 111082, legislation to amend the CFRO to establish new qualification requirements for candidates seeking public funds, set the amount of public funds that may be disbursed, delay the disbursement date of public funds, change the matching funds formula, continue with adjustable individual expenditure ceilings that start at \$250,000 for a candidate for the Board of Supervisors and \$1,475,000 for a candidate for Mayor, and cap the Election Campaign Fund at \$7 million. The legislation was subsequently approved by the Board of Supervisors.
- At its September 12 meeting, the Commission approved amendments to Ethics Commission Enforcement Regulations VI.A and XIV.C to permit the Commission to calendar proposed dismissals or settlements of enforcement matters based on the request of one, rather than two, Commissioners. These amendments were forwarded to the Board of Supervisors and took effect on November 11, 2011.
- During the year, the Commission considered provisions in the Statements of Incompatible Activities (SIA) for the General Services Agency (GSA), the Department of Human Resources (DHR) and the San Francisco Public Library (SFPL). The Commission approved changes to the SIAs of the DHR, which asked that its SIA be amended so that it better aligns with the department's confidentiality policy; and the SFPL, which asked that certain provisions be narrowed so that they not unduly restrict employees from engaging in activities that actually inure to the benefit of the employees as well as advance the mission of the SFPL.
- The Commission considered waiver requests from the post-employment restrictions under the Government Ethics Ordinance (GEO). It approved a request by former

Deputy City Attorney Thomas Long for waivers from the post-employment bans against representing a non-City party before a court or administrative agency on matters in which he represented the City and against communicating with his former City department for one year with the intent to influence a governmental decision. The Commission adopted staff's recommendations supporting the waiver for appearances before a court or administrative agency and limiting the waiver of the one-year ban to Mr. Long's communications on behalf of his then-current employer, The Utility Reform Network ("TURN").

- The Commission also granted requests for waivers from two post-employment restrictions to Tiffany Bohee, Interim Director of the Redevelopment Agency of the City and County of San Francisco ("SFRA"), which permit Ms. Bohee, a former employee of the Office of Economic and Workforce Development ("OWED"), to continue to work on a pending legislative packet to fund redevelopment activities in San Francisco and to communicate with her former department on behalf of the SFRA.
- The Commission considered a request for a waiver from the one-year post-employment restriction that applies to legislative aides of the Board of Supervisors under sections 3.234(a)(2) and 3.234(b)(1) of the GEO. After receiving testimony from Robert Selna, a former legislative aide to former Supervisor Ross Mirkarimi, and members of the public, the Commission did not take a vote on Mr. Selna's request.

#### MANDATES AND ACCOMPLISHMENTS OF THE COMMISSION

*The Commission is managing to meet its mandates with 17 staff members, down from the 18 staff members who were present three years ago. Incremental budget decreases have led to a loss of staffing. The Commission manages to meet solidly its obligations but is limited in the number and scope of new initiatives and improvements that it can make due to budget shortfalls that currently affect all of City government. While accomplishments are not as sweeping as in prior years, the Commission managed to conduct its business and produce some new efficiencies and improvements.*

*On June 30, 2011, the Civil Grand Jury issued a report entitled "San Francisco's Ethics Commission: The Sleeping Watch Dog," which is available at <http://www.sfsuperiorcourt.org/Modules/ShowDocument.aspx?documentid=2860>. On August 12, 2011, the Commission issued its response, which is available at <http://www.sfethics.org/ethics/2011/09/ethics-commission-response-to-the-2010-2011-civil-grand-jury-report.html>.*

#### Campaign Finance Regulation and Reporting

*The Commission enforces the City's Campaign Finance Reform Ordinance (CFRO), San Francisco Campaign and Governmental Conduct Code section 1.100 et seq., which sets*



*voluntary ceilings on campaign expenditures by candidates and imposes mandatory limits on contributions to candidates.*

*The Commission regularly reviews the operation of the CFRO, enacts enabling regulations, and proposes substantive and operational changes. It also advises on amendments proposed by the Board of Supervisors.*

*This year, staff has continued its review of the CFRO, and conducted two interested persons meetings about possible amendments to consolidate several of the reporting requirements mandated under the Ordinance. These draft amendments will likely come before the Commission for review and discussion in October 2011. Recently, at its July 2011 meeting, the Commission approved amendments relating to the City's partial public financing program to place a cap on the amount of public funds that may be disbursed to each certified candidate. This legislation is pending before the Board of Supervisors.*

*Earlier in the year, at its October 2010 meeting, the Commission approved changes to section 1.126 of the CFRO. These amendments, if enacted, would allow campaign contributions to be made by individuals affiliated with non-profit organizations that contract with local agencies; allow such contributions to come from parties that contract with state agencies whose board members are appointed by local elected officials; refine the scope of the contractor contribution ban so that it applies only to contracts or a series of contracts worth \$100,000 or more; and amend related filing and disclosure requirements. At this point, the Board of Supervisors is not expected to consider these improvements and, therefore, they will not be enacted in the foreseeable future.*

*Under the Charter, the Commission serves as filing officer for five categories of local candidates and committees:*

- 1. Candidates seeking election to local office and their controlled committees,*
- 2. Committees formed or existing primarily to support or oppose candidates seeking election to local office,*
- 3. Committees formed or existing primarily to support or oppose qualification or passage of a ballot measure being voted on only in San Francisco,*
- 4. County general-purpose committees active only in San Francisco, and*
- 5. Candidates and candidate committees for county central committee office.*

*As filing officer, the Commission promotes compliance by candidates and committees and maintains records of reports filed. It audits campaign statements and imposes late fines and/or penalties for failure to adhere to filing deadlines and reporting requirements.*

*Regular semi-annual filings for active committees occurred on August 2, 2010 and January 31, 2011. Quarterly filing deadlines occurred on October 5 and 21, 2010 for committees primarily formed to support or oppose a ballot measure(s) not yet voted upon. The Commission reminded committees of the deadlines, sent out notices to delinquent filers, and posted reports on its web site, [www.sfethics.org](http://www.sfethics.org).*



Staff continued to send out advance notices through mail, email and phone calls in order to reduce the number of late filings.

Campaign Finance – (See discussions above.) The Commission will consider staff recommendations to amend the CFRO at its October 2011 meeting.

Conflicts of Interest – The Commission continued to provide trainings on Statements of Incompatible Activities. Also, during the year, the Commission approved:

- An amendment to section 3.216(b)-5 of the Government Ethics Ordinance (“GEO”), San Francisco Campaign and Governmental Conduct Code section 3.200 et seq., to clarify that all gift cards and gift certificates are to be treated as cash under this section of the ordinance that addresses gifts from restricted sources.
- An amendment to section 3.234(b)(2) of the GEO to permit an appointed Mayor who does not seek candidacy for that office to obtain full-time City employment within one year of leaving office. The amendment restricts the former Mayor to obtaining a position that, in the first year, pays no more than the salary that he or she received immediately prior to appointment as Mayor.
- A request for a waiver from the one-year post-employment ban on compensation from contractors under GEO section 3.234(a)(3) by Doug Shoemaker, head of the Mayor’s Office of Housing, so that he could assume a position as President of Mercy Housing California.
- Requests for waivers from the one-year post-employment communications ban and the ban on compensation from contractors under sections 3.234(a)(2) and 3.234(a)(3) of the GEO, respectively, by Office of Economic and Workforce Development employee Kyri S. McClellan so that she could assume the executive director position on the San Francisco America’s Cup Organizing Committee.

### Campaign Finance Reform Ordinance

During the year, the Commission approved amendments to the Campaign Finance Reform Ordinance (“CFRO”) related to the public financing program for candidates to the Board of Supervisors and the office of the Mayor. In particular, the amendments sought to address issues raised by the U.S. Supreme Court’s June 27, 2011 decision in *Arizona Free Enterprise Club’s Freedom Club PAC, et al. v. Bennett*, which held that Arizona’s matching public funds program “substantially burdens protected political speech without serving a compelling state interest and therefore violates the First Amendment.” Staff worked with Supervisor Kim and others to craft the amendments, which address not only the situation created by the *Bennett* decision but also concerns that were raised at Interested Persons meetings that candidates must do more to show viability before receiving public funds and that public funds should be disbursed beginning on a date later than February of the election year. The amendments establish new qualification requirements for candidates, set the amount of public funds that may be disbursed, delay the disbursement date of public funds, change the qualifying and matching funds formula, and continue with an

adjustable individual expenditure ceiling. After consideration by the Board of Supervisors, the Commission approved three additional amendments that (1) lower the cap on the Election Campaign Fund from \$13.5 million to \$7 million, (2) make a conforming change in the provision addressing when the Executive Director must notify the Commission and the Board of Supervisors about the amount of funds available in the Election Campaign Fund and when the Executive Director may request a supplemental appropriation, and (3) leave the current Individual Expenditure Ceiling for publicly-financed Mayoral Candidates at the current level of \$1.475 million. These proposals all passed at the Board of Supervisors.

The Commission also approved amendments to the CFRO to delay certification of candidates for the Board of Supervisors who seek public funds for the November 2012 election until the Redistricting Task Force completed the new district boundaries on or around April 15. This provision also passed at the Board.

Finally, the Commission approved a number of substantive and technical amendments to the CFRO which were based on input from Interested Persons meetings. These amendments would have, among other things, set forth and consolidated disclaimer and disclosure requirements for communications that are paid for by third parties and that concern candidates for City elective office; establish the content and form of disclaimer statements on third party communications and require that disclaimers appear in 14-point font on written communications; establish a standard timing requirement for all disclosure reports to be filed by candidates and third parties who distribute communications regarding candidates for City elective office; excluded certain compliance costs from the determination of whether to lift the Voluntary Expenditure Ceiling or adjust the Individual Expenditure Ceiling; preserve the \$500 per person contribution limit to candidates, but adding language to require the Commission to adjust annually the limit according to changes in the Consumer Price Index from a February 2012 base, provided that the Commission ratifies any changes; deleted the overall limit on contributions that a person may make to all candidate committees; deleted the requirement that a candidate seeking public funds must have filed a statement that he or she intends to participate in the public financing program; and deleted a requirement that applicants for public financing agree (i) not to pay any campaign vendors or contractors in return for a contribution and (ii) not to make more than 50 total payments to a vendor or contractor that has made a contribution to the candidate. Unfortunately, these amendments did not pass at the Board.

During the year, the Commission, in considering the matter of the Progress for All Committee and Support Drafting Ed Lee for Mayor 2011 Committee, committees formed to urge Interim Mayor Ed Lee to run for Mayor, determined that Interim Mayor Lee was not a candidate within the meaning of the Political Reform Act by virtue of his appointed office. The Commission also held that persons who worked on or volunteered on the committees are not necessarily prohibited from working or volunteering on the Mayor Lee candidate committee. However, should facts surface that coordination occurred between Mayor Lee and such committees, such allegations will be investigated under the Commission's enforcement regulations. The Commission instructed staff to develop legislation or regulations to provide guidance in this area.

## Public Financing

*For the November 2, 2010 election 22 candidates for the Board of Supervisors qualified to receive public funding totaling \$1,477,713, an average of \$67,169 per eligible candidate. While some of these funds were disbursed in FY 09-10, most of the disbursements, a total of \$1,081,472, occurred during FY 10-11. The per candidate available disbursement limit (PCADL) for the November 2010 election was \$293,288 and the highest amount of public funds distributed to any candidate was \$140,572. Candidate spending in the election totaled \$3,581,175 and third party spending totaled \$1,305,460. The highest level to which the Ethics Commission raised a candidate's Individual Expenditure Ceiling was \$493,000.*

*Beginning in February 2011, the Commission began the administration of the public financing program for candidates for Mayor in the November 2011 election. For the FY 10-11, the Commission disbursed a total of \$2,686,699 in public funds to eight eligible mayoral candidates.*

*The Commission conducted several trainings and provided other outreach on the supervisorial and mayoral programs.*

*For the November 8, 2011 election nine candidates for Mayor qualified to receive public funding. A total of \$11,094,247 in the Election Campaign Fund was available for disbursement. On the 59th day before the election the Executive Director was required to calculate the Per Candidate Available Disbursement Limit. Prior to this date, eligible candidates could receive up to \$900,000 each. The Per Candidate Available Disbursement Limit was determined to be \$1,232,694. However, at the time that the Commission notified Mayoral candidates of the Per Candidate Available Disbursement Limit, the Commission also informed candidates of pending legislation that would have capped the disbursements at \$900,000 per candidate in response to the Supreme Court's June 27, 2011 decision in *Arizona Free Enterprise Club's Freedom Club PAC, et al. v. Bennett*.*

*The nine eligible candidates received a total of \$4,696,390 in public funds, an average of \$521,821 per candidate. Because the individual expenditure ceiling was raised for every publicly-financed candidate and the Per Candidate Available Disbursement Limit was greater than \$900,000, candidates were eligible to receive more than \$900,000 based on the amount of matching contributions raised; none of the nine publicly-financed candidates received more than \$900,000. The highest amount disbursed to any candidate was \$720,690.*

*Candidate spending in the election totaled \$11,360,605 and third party spending totaled \$2,569,035. The highest level to which the Ethics Commission raised a candidate's Individual Expenditure Ceiling was \$2,675,000.*

*In spring 2012, the Board of Supervisors approved changes to the public financing program in response to the decision in *Arizona Free Enterprise Club's Freedom Club PAC, et al. v. Bennett*. The changes also involved raising the qualification threshold for Supervisorial candidates from \$5,000 to \$10,000 and raising the individual expenditure*

ceiling for qualified Supervisorial candidates from \$143,000 to \$250,000. For the November 6, 2012 election, the Commission disbursed, in FY 11-12, a total of \$20,000 to one eligible candidate. The other participating candidates applied for and received public funding in the following fiscal year, FY 12-13.

The Commission conducted several trainings and provided other outreach on the supervisorial and mayoral programs.

#### Audit Program

The Commission serves as the filing officer of campaign statements that are filed by San Francisco candidates and other committees that support or oppose local ballot measures or candidates. The Commission conducts audits of committees that are selected under a random selection process and mandatory audits of publicly funded candidates.

#### Statement of Economic Interests (SEI), Sunshine Ordinance Declaration, and Certificate of Ethics Training

*Elected officials, department heads, and members of decision-making boards and commissions file the SEI, Sunshine Ordinance Declaration, and Certificate of Ethics Training with the Ethics Commission to provide financial interest information and to verify that they have completed governmental ethics training. Some original SEIs filed by elected officials are forwarded to the Fair Political Practices Commission, the state agency that regulates SEIs.*

*On the SEIs, filers list financial interests such as stocks, investment property, gifts, and income. SEIs are public documents that provide financial interest information to ensure that public officials are not making governmental decisions that inure to their own benefit.*

*Both the Sunshine Ordinance Declaration and Certificate of Ethics Training verify that the filer has read the Sunshine Ordinance and watched the governmental ethics training video "Rules of Conduct for Public Officials." This training, found on the City Attorney's website, provides information on governmental ethics laws, public disclosure rules, and public meeting requirements. Customarily the Ethics Commission coordinates with the City Attorney's office to present a revised training every two years. The "Rules of Conduct for Public Officials" training was last hosted on March 2, 2009, and the next training will be provided sometime in spring of 2012. In the mean time, filers may meet the requirements found on both forms by watching the most recent version available on the City Attorney's web site or linked from the Commission's web site.*

*The 693 SEIs, 414 Sunshine Ordinance Declarations, and 299 Certificates of Ethics Training filed with the Ethics Commission this year are available on the Commission's website. As of June 30, 21 members of boards and commissions did not file their annual SEIs. (This number was reduced to three as of August 26, 2011.)*

*In the last two years, the Commission, with the help of a great team of volunteer interns, scanned and archived SEI files from 1975 to 2006. Although the Commission is only required to keep SEIs for 7 years, staff felt it was important to retain the SEI records for historical value. Having*



scanned archives of SEIs that go back to 1975 allows the public to view SEI filings from 1975 to 2006 in the public area from a computer station verses waiting for staff to search through boxes. Filings from 2007 to 2012 can be viewed on the Ethics Commission website.

The 570 Statements of Economic Interests, 418 Sunshine Ordinance Declarations, and 321 Certificates of Ethics Training filed with the Ethics Commission this year are available on the Commission's website. The reduction of numbers compared to last year is a result of the SEI SFEDS being restructured and organized by filer verses by position.

For example, if a commissioner served on more than one commission, the former system was organized in a way that staff was required to open multiple accounts for each position and data enter the SEI filings in multiple times. With the new structure, a filer has an account and staff can add multiple positions. This means that in this year, staff spent a substantial amount of time to comb through the data to make sure that each commissioner account was accurately transferred over and reflected all the filer's positions. Due to this technical, quality control, and clean-up work, staff's normal process of notification was not as rigorous; however, staff believes that its efforts will result in improved filer compliance in the long run.

Due to the exciting potential changes on the horizon for the SEI Program, staff focused on preparing the e-filing system to go paperless. Currently the California Senate is discussing an expedited bill to allow local jurisdictions to require e-filing for SEIs. So far, most of the various voting groups have unanimously chosen in favor of allowing local jurisdictions to go paperless. The status of this bill number 2062 can be tracked at (<http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml>)

By reviewing and updating 1,163 filer accounts and uploading filings as needed, staff is doing what it can to ensure that the very likely transition to paperless filings will go smoothly. If local jurisdictions are allowed to go paperless, this means that in 2013, instead of spending months to enter the approximately 1,500 SEI-related forms the Commission receives each year, the Commission will be able to focus its limited staff resources on tracking and notifying filers. Focusing staff efforts on educating commissioners and addressing issues with filers as soon as possible will result in better compliance.

#### Lobbyist Registration and Reporting

*Lobbyists are required by ordinance to register with the City and file monthly reports of any activity intended to influence local legislative or administrative action. The Commission reviews lobbyist statements to ensure completeness and accuracy.*

*During its previous extensive review of the Lobbyist Ordinance, the Commission determined that it would move to an electronic filing format, which took effect on January 1, 2010. This change has allowed for more timely filings and greater public access to each lobbyist's disclosures. The electronic database allows the public to conduct customized searches for information rather than laborious manual searches through paper filings. Staff has worked with the filing system provider to streamline the electronic filing system and continues to listen to feedback by the*

*public and registered lobbyists to ensure both users and the public are able to access the system with greater ease.*

Lobbyists are required by ordinance to register with the City and file monthly reports about any activity intended to influence local legislative or administrative action. The Commission reviews lobbyist statements to ensure that they are accurate and complete.

The electronic filing process has enabled more timely filings and greater public access to individual lobbyist disclosure statements. The electronic database enables the public to conduct customized searches rather than tedious manual paper searches. Staff has worked with the filing system provider to streamline the system and continues to listen to feedback from the public and registered lobbyists to ensure that they are able to access the system with greater ease.

#### Campaign Consultant Registration and Reporting

*The Campaign Consultant Ordinance, passed in 1997, requires any individual or entity that earns \$1,000 or more in a calendar year in exchange for providing campaign consultant services to register with the Ethics Commission and file quarterly disclosure statements. The Campaign Consultant Ordinance is the result of a voter referendum and therefore is not subject to changes without additional voter approval. A ballot measure with proposed amendments to the Ordinance will be on the November 2011 ballot.*

*Campaign consultants are required to report names of clients, services provided for those clients, payments promised or received, political contributions, gifts made to local officials, and other information. Staff prepares a summary of the quarterly statements and posts the summary on the Commission's website. For the 2010-2011 fiscal year, there was an average of 33 consultants registered with the Commission and over \$4.2 million in payments reported as promised or received.*

*In early August 2011, staff conducted an audit of all 2011 campaign statements filed with the Ethics Commission. Staff continues to ensure that all consultants required to be registered with the Commission file their registration forms and pay their registration fees.*

The Campaign Consultant Ordinance, passed in 1997, requires any individual or entity that earns \$1,000 or more in a calendar year in exchange for providing campaign consultant services to register with the Ethics Commission and file quarterly disclosure statements. The Campaign Consultant Ordinance is the result of a voter referendum and therefore is not subject to changes without additional voter approval. A ballot measure with proposed amendments to the Ordinance was not passed by the voters during the November 2011 election.

Campaign consultants are required to report names of clients, services provided for those clients, payments promised or received, political contributions, gifts made to local officials, and other information. Staff prepares a summary of the quarterly reports and posts the summary on the Commission's website. Staff continues to ensure that all consultants

required to be registered with the Commission file their registration forms and pay their registration fees.

During the 2011-2012 fiscal year, there was an average of 44 consultants registered with the Commission and over \$5.1 million in payments reported as promised or received. In addition, during the campaign for the November 2011 election, the Commission had the highest number of registered consultants that it has had since 2003.

#### Investigations and Enforcement

*The Ethics Commission has the authority to investigate complaints that allege violations of certain state and local laws that relate to campaign finance, conflicts of interests, lobbyists, campaign consultants, and governmental ethics. In addition, the Whistleblower Ordinance directs the Commission to investigate charges of retaliation directed against complainants. During the 2010-2011 fiscal year, staff resolved 20 cases. This number does not include the myriad of other cases that come before staff but that were determined not to be within the jurisdiction of the Commission. The Commission entered into six settlement agreements during the year.*

The Ethics Commission has the authority to investigate complaints that allege violations of certain state and local laws that relate to campaign finance, conflicts of interests, lobbyists, campaign consultants, and governmental ethics. In addition, the Whistleblower Ordinance directs the Commission to investigate charges of retaliation directed against complainants. During the 2011-2012 fiscal year, staff resolved 18 cases. This number does not include the myriad of other cases that come before staff but that were determined not to be within the jurisdiction of the Commission.

#### Enforcement Regulations

*Staff is currently reviewing and preparing updates of its enforcement regulations regarding complaints alleging willful violations of the Sunshine Ordinance. The Sunshine Ordinance Task Force delivered its recommendations on these proposed regulations on August 1, 2011. The Commission will likely consider these amendments in the near future.*

Staff is currently reviewing and preparing updates of its enforcement regulations regarding complaints alleging violations of the Sunshine Ordinance. The Ethics Commission held a joint meeting with the members of the Compliance & Amendments Committee of the Sunshine Ordinance Task Force on April 13, 2012. The Commission will likely consider these amendments before the end of 2012.

The Commission approved amendments to Ethics Commission Enforcement Regulations sections VI.A and XIV.C to permit the Commission to calendar proposed dismissals or settlements of enforcement matters based on the request of one, rather than two, Commissioners.



## Education and Outreach

*The Commission's commitment to educate the public about San Francisco's ethics laws and to support campaign reform and government accountability efforts is consistent with City and state policy.*

*In addition to in-person and web trainings, the Commission provides information to elected officials, members of boards and commissions, City departments, candidates, treasurers, lobbyists, campaign consultants, and members of the public about ethics-related laws and requirements on a day-to-day basis.*

*Compared to last year, staff conducted an additional 43 workshops. Of the total 68 trainings provided this year, 58 were in-person trainings or meetings. Ten trainings are videos available on the Commission's website.*

*Because the Educator/Outreach Coordinator continued to administer the Statements of Economic Interests, Sunshine Ordinance Declarations, and Certificates of Ethics Training, all time-consuming tasks, resources were focused on producing online training videos that can be viewed anytime on the web. This year, the Commission posted web training videos that range from 26 minutes to 56 minutes each. The ten training videos on the web and in-person trainings have received positive feedback for their accessibility, usefulness, and ability to provide complex information in an approachable manner.*

*Staff provided or participated in 36 trainings or meetings related to matters within the jurisdiction of the Ethics Commission. Of the 36 trainings provided, 25 were in-person trainings or meetings and 11 were web training videos.*

*This fiscal year, the Educator/Outreach Coordinator continued to take on additional tasks of administering the Statements of Economic Interests and Sunshine Ordinance filings, which placed great demands on her time. Additionally beginning in June, the Educator/Outreach Coordinator began to administer the Commission's Internship Program. Because many of the trainings are made available on the web, she was able to focus her attention on training volunteers to assist in projects like the SEI archival project, and begin the process of writing educational manuals for volunteer interns and cross training for staff.*

*In addition, the Educator/Outreach Coordinator has worked with interns to generate projects and creative ways of educating various groups about the laws that the Commission regulates. One intern suggested incorporating positive psychology techniques in training City employees on Conflicts of Interest Rules, another suggested designing a mock trial for high school students to learn how to be engaged in local government. The Coordinator has created a prototype of an interactive board game covering governmental ethics and incompatible activities rules for City employees. Due to limited staffing, these fresh ideas cannot immediately be implemented, but these are projects that interns will be working on over the years to help foster interest and educate the Commission's various audiences.*

## Advice and Opinions

The Commission is charged with interpreting and applying the conflict laws under its jurisdiction, requiring that it consider requests for waivers, which it routinely does, and that it issue formal and informal written advice on matters requiring interpretation.

Commission staff is available each workday to answer public inquiries about San Francisco ethics laws. During the course of the year, the number of inquiries runs into the hundreds. *In the fiscal year, the Commission issued three informal advice letters, one relating to conflicts of interest, a second relating to the Lobbyist Ordinance, and a third relating to the Campaign Consultant Ordinance. All of the Commission's advice letters are available on its website.*

**During the year, the Commission issued three informal advice letters, two related to section 1.126 of the Campaign and Governmental Conduct Code and one on whether a political organization may serve as an intermediary for campaign contributions. The Commission's advice letters are posted on its website.**

#### Electronic Advances

*The Commission continued to expand its on-line services available to the public and aggressively pursue new technologies to enhance services despite significant budget constraints.*

*The Commission renewed its contract with Netfile to maintain and enhance the Commission's campaign finance, Statement of Economic Interests, and lobbyist electronic filing systems. In FY 10-11, the electronic filing system processed over 2,000 campaign finance, Form 700, and lobbyist electronic filings, which were instantly made available to the public on the Commission's on-line database. In addition, the Commission scanned and made paper filings, including campaign consultant filings, available on-line.*

*During the winter, Commission staff actively worked with the Fair Political Practices Commission Chairman's Task Force to make recommendations to support paperless electronic filing statewide. In January 2011, the Commission enhanced its Interested Persons E-mail List to allow the public to sign-up on the Commission's web site and receive automated notices. A month later, the Commission launched an on-line payment system to pay fines, settlements, and registration fees by credit/debit card or e-check.*

*The Commission's web site remained a popular resource:*

- *Users visited the system 58,086 times during the year, a ten percent increase over FY 09-10; and*
- *There were 151,048 "pageviews" of the website, a nine percent increase over FY 09-10.*

*The Commission also made use of a variety of social networks and on-line services to disseminate information to the public including:*

- ***Interested Persons E-mail List:*** *The public may subscribe to the Ethics Commission's Interested Persons E-mail List to obtain important notices, press releases and meeting agendas via e-mail;*

- *Twitter:* Over 400 Twitter users receive news updates regarding the Commission's work on Twitter;
- *Facebook:* Over 250 Facebook users receive news updates regarding the Commission's work on Facebook;
- *YouTube:* Staff has developed trainings on video that members of the public and City staff can view from their office or home on the Commission's web site or YouTube channel;
- *Google Calendar:* A calendar is available on the Commission's web site to track important deadlines, interested persons meetings, training opportunities, events, and Commission meetings. The calendar can be viewed on the Commission's web site; or anyone may subscribe to the calendar and receive updates automatically from within his or her own calendar application or mobile phone;
- *RSS (Really Simple Syndication) Feeds:* Updates to the Commission's web site are published via RSS. Anyone may subscribe to all new postings to the web site, or to a variety of subtopics; and
- *Audio Recordings and iTunes:* Since June 2009, audio recordings of Commission meetings have been published on the web as a podcast and are accessible in the iTunes Podcast Directory. Audio recordings are usually posted to the Internet within 24-48 hours of the meeting. The public may subscribe to the podcast to receive notification when new recordings are available and listen to meetings on computers, mobile phones, and a variety of audio devices.

The Commission continued to look for opportunities to improve its electronic services and increase efficiency with a limited technology budget. Commission staff worked with the Mayor's office and Assemblyman Tom Ammiano to pass Assembly Bill (AB) 2452. The bill permits local filing officers to require electronic filing of state campaign finance forms and eliminate the paper filing requirement. AB 2452 will go into effect January 1, 2013.

In January, Commission staff worked with Netfile, the Commission's electronic filing system vendor, to release an application programming interface (API) for software programmers to access the Commission's lobbyist database. In April, Commission staff worked with the Department of Technology to synchronize the Commission's electronic lobbyist and campaign finance reports with the City's new [data.sfgov.org](http://data.sfgov.org) web site. The web site allows the public to build interactive graphs and maps of the Commission's data using on-line tools and publish the information on other web sites. The graphs and maps automatically update when lobbyists and committees file new disclosure reports. In addition, the system has an API to access both the campaign finance and lobbyist data. The Commission's data on [data.sfgov.org](http://data.sfgov.org) is also interoperable with similar data web sites set up in cities throughout the country.

The Commission's web site remained a popular resource. During the Commission's official misconduct hearings, Commission staff made all records submitted by attorneys available to the public on the Commission's web site.

- Users visited the web site 62,819 times during the year, an eight percent increase over FY 10-11; and

- There were 188,184 “pageviews” of the web site, a twenty-four percent increase over FY 10-11.

## POLICY RECOMMENDATIONS

*The Commission is charged with making policy recommendations on issues under its jurisdiction. The Commission endeavors to create new legislation that makes campaign finance and ethics laws and regulations more effective while being easier to comprehend and also works as a partner with the Board of Supervisors in effecting positive changes to the Administrative Code, the Campaign and Governmental Conduct Code and other statutes governing the City. Policy Priorities adopted for this year include:*

- 1. Mayoral Public Financing Program – staff has to be ready for an intensified season of what is already a very busy program that is highly technical and difficult to administer. Additional complications may well result because of the Supreme Court's June 27, 2011 decision in Arizona Free Enterprise Club's Freedom Club PAC, et al. v. Bennett, which overturned Arizona's public financing program. This will perhaps entail swift and complicated changes to how the program is administered in mid-election.*
- 2. Campaign Consultant Ordinance – once the Commission's proposal for the ballot is ratified, the Commission may no longer express any public opinion for or against the ballot measure; the measure must speak for itself. If it passes, the Commission will then need to adopt regulations to govern the program and staff will have to implement the new procedures, including the development of software to integrate the new program into our current Online Filing System. Should the measure fail, the Commission may opt to “return to the drawing board.”*
- 3. Staff building – in prior discussions, the Commission has acknowledged that unexpectedly high staff turnover made it necessary to allow time for staff-building. The long-term stability and capability of the staff requires that newer employees develop a deft understanding of the laws we oversee and a stable performance record that the Commission – and the public – can count on. It also requires that long-term staff feel supported and energized in their duties and that all staff reflect high morale and satisfaction in order to achieve maximum productivity.*
- 4. Education and Outreach – the Commission has frequently restated its commitment to this area and conducted several discussions about it last year, essentially reaching the conclusion that work in this area is satisfactory but that it is also an ongoing priority.*

*The Commission never stops reviewing campaign finance laws and regulations, consistently performs research and outreach on conflict-of-interest issues, and is always mindful of the need for quality enforcement.*

## AFFILIATIONS

The Commission is a member of the Council on Governmental Ethics Laws (COGEL) but due to budget limitations no longer attends the annual convention.

## BUDGET

The Commission's annual approved budget totals are as follows:

FY 94 - 95	157,000
FY 95 - 96	261,000
FY 96 - 97	313,274
FY 97 - 98	394,184
FY 98 - 99	475,646
FY 99 - 00	610,931
FY 00 - 01	727,787
FY 01 - 02	877,740
FY 02 - 03	1,156,295
FY 03 - 04	909,518
FY 04 - 05	1,052,389
FY 05 - 06	1,382,441
FY 06 - 07	8,416,109* (1,711,835 non-grant funding)
FY 07 - 08	3,592,078 (2,261,877 non-grant funding)
FY 08 - 09	5,453,874 (2,241,818 non-grant funding)
FY 09 - 10	6,011,566 (2,283,368 non-grant funding)
FY 10 - 11	4,177,819 (2,201,325 non-grant funding)**
FY 11 - 12	8,348,537 (2,259,979 non-grant funding)***

\*Includes 6,704,274 front-loaded funding for Mayoral Election Campaign Fund

\*\*Agencies Citywide absorbed across-the-board budget cuts.

\*\*\*Includes annual deposit of \$2,009,451 for the Election Campaign Fund (ECF) plus a repayment of \$4,079,107 borrowed in previous years

## MEMBERSHIP AND ADMINISTRATION

Commission membership was as follows:

Commissioner	Appointed By	Dates of Service
Jamienne S. Studley	City Attorney	1-2007 to 2-2008 2-2008 to 2-2014
Dorothy S. Liu	Board of Supervisors	4-2011 to 2-2017
Beverly Hayon	Mayor	1-2011 to 2-2012 2-2012 to 2-2018
Charles L. Ward	District Attorney	7-2006 to 2-2007 2-2007 to 2-2011



Paul Renne

2-2012 to 2-2013

Benedict Y. Hur

Assessor-Recorder

3-2010 to 2-2016

Commissioner Ben Hur was re-elected to serve as Chair at the February 27, 2012 meeting and Commissioner Jamienne Studley was re-elected as Vice-Chair.

The Ethics Commission had a staff of 17, supported by interns throughout the year. Staff included Executive Director John St. Croix; Deputy Executive Director Mabel Ng; Assistant Deputy Director Shaista Shaikh; Auditors Angeles Huang, Amy Li, and Cathy Davey; Public Finance Clerk Marvin Ford; Office Manager Jen Taloa; Campaign Finance Officer Jarrod Flores; Fines Collection Officer Ernestine Braxton; Campaign Finance Assistants Teresa Shew and Lawrence Shum; Chief Enforcement Officer Richard Mo (resigned in August 2011); Assistant Investigators Garrett Chatfield and Catherine Argumedo; IT Officer Steven Massey; and Education and Outreach Coordinator Judy Chang. During the fiscal year, we were fortunate to have had the services of several interns: **Alex Gudim**, a student at University of San Francisco (USF); **Johnny Hosey**, a graduate of San Francisco State University (SFSU); **Sade Jones**, an intern with the SF Youth Works Program; **Colby Payne**, a graduate of USF; **Perry Wong**, a student at New York University; **Samantha Sabo**, a graduate of USF; **Sahand Shahrabani**, a student at USF; **Abdullah Taleb**, a student at SFSU; and **Alana Taloa**, a student at John C. Kimball High School.

## FUTURE INITIATIVES

The Commission will continue to fulfill its mandated duties in the forthcoming years, with a particular focus on achieving the following priority objectives:

- *The Commission is dedicated to increasing public confidence in its mission and to delivering fairness both in its actions and the perception of its actions.*
- *The Commission will actively demonstrate its commitment to the education of the public, the regulated community, the City's leadership body and the employees of the City and County through continued educational forums, seminars, on-line tutorials and other outreach mechanisms in order to strengthen both the understanding of and adherence to the laws under the Commission's jurisdiction.*
- *The Commission will continue the ongoing process of reviewing, updating and renewing the Campaign Finance Reform Ordinance in order to keep pace with changes in policy, technology, civic needs and campaign modernization.*
- *The Commission will expand its communications and improve its relations with the general public and work to ensure that there is general understanding in the community about the Commission's work, mission and decision-making processes.*
- *The Commission will work continually to expand the scope of its enforcement and investigation activity, to analyze the needs and accomplishments in this area and to make productive use of staff and other resources.*

- *The Commission will place new emphasis on resolving conflicts of interest and also the appearance of conflicts of interest by City agencies, officials, department heads and candidates and campaigns through both the education and investigations processes.*
- *The Commission will continue to conduct reviews of the Lobbyist Ordinance and draft regulations related to the Campaign Consultant program in order to seek improved disclosure and reporting requirements.*
- *The Commission will continue to work with various City departments, boards and commissions to inform members and employees of the various ethics rules that govern them. The Commission and staff will take advantage of training, education and other opportunities that will help advance their capabilities.*
- *The Commission will endeavor to provide timely and comprehensible advice.*
- *The Commission will work to secure sufficient budget resources to meet its mandates.*
- *The Commission will continue to monitor the application of laws within its jurisdiction and will continue to propose amendments and regulations as appropriate.*
- The Commission will provide an on-line self-registration web site for lobbyists to expedite lobbyist registration, payment of fees, and the establishment of electronic filing accounts.
- In accordance with the passage of AB 2452 by the California State Legislature, the Commission will consider amendments to section 1.112 of the Campaign Finance Reform Ordinance (CFRO) to require that all campaign statements submitted to the Ethics Commission be filed electronically. Passage of this legislation will require local candidates and committees to file campaign disclosure reports electronically, thereby eliminating the need for paper filings.
- The Commission will transition its server to a virtual environment hosted at the City's new data center as part of the City's server consolidation project.
- The Commission will provide interactive summary graphs and tables on its web site for the November 6, 2012 election. The web site will provide summaries of spending by race, public finance disbursements, expenditure ceilings, and third-party spending.
- The Commission plans to continue its consideration of regulations to set out the process of handling complaints related to the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force, which has been ongoing since August 2010.
- The Commission will address recommendations raised in the City's Budget and Legislative Analyst June 5, 2012 report to Supervisor Campos, which compared the City's ethics laws, policies and enforcement with those of the City of Los Angeles.
- The Commission will also seek to clarify the scope of section 1.126 of the CFRO; namely, that the ban on contributions applies to local officials seeking election to state office. This change will be consistent with informal advice given by Commission staff.



- Staff anticipates proposing legislation to amend the CFRO to require a committee promoting an individual as a candidate to the voters to file reports and disclose its activities with the Commission as a primarily formed committee.
- Staff anticipates proposing regulations to clarify CFRO section 1.122 related to the use of campaign funds by candidates for City elective office.
- The Commission will likely consider regulations to establish an electronic filing system for campaign consultants.

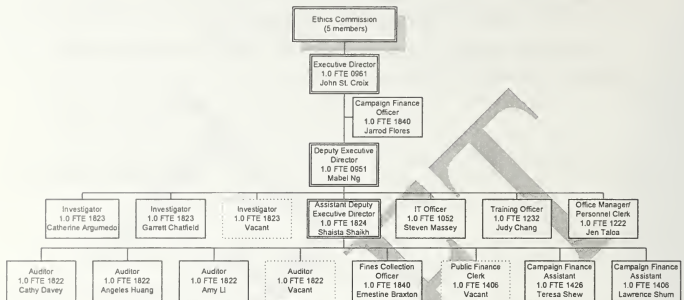
Respectfully Submitted,

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John St. Croix, Executive Director

# San Francisco Ethics Commission

FY 11-12  
(18 Positions)



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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

## EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of October 22, 2012

BENEDICT Y. HUR  
CHAIRPERSON

JAMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

### 1. November 6, 2012 election.

The odd-numbered districts for the Board of Supervisors and four seats each for the Board of Education and Community College Board will be voted on in the November 6, 2012 election. Twenty-six candidates for the Board of Supervisors, eleven candidates for the Board of Education and ten candidates for the Community College Board have qualified for the ballot.

Twelve candidates for the Board of Supervisors have been certified as eligible to receive public funds. As of October 16, the Commission disbursed a total of \$769,345 to the 12 qualified candidates. Information regarding the amounts disbursed to each candidate and the amounts privately raised and spent by each candidate is posted to data dashboards on the Commission's website.

### 2. Investigation and enforcement program.

As of October 16, 2012, there are 24 pending formal complaints alleging violations within the Ethics Commission's jurisdiction. Out of the nine complaints alleging Sunshine Ordinance violations, the resolution of seven is pending the approval of the Commission's Sunshine Ordinance regulations.

Category	# of Complaints
Campaign Finance	11
Conflict of Interest	2
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	9
<b>TOTAL</b>	<b>24</b>

### 3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline was on October 5, 2012 for the First Pre-Election statement, which covers the reporting period ending September 30, 2012. Four committees still have not filed their required statements. They have been sent a Non-Specific Written Notice. In the interim, staff continues to receive and process campaign statements for other filing deadlines. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations. The next filing deadline is October 25, 2012 for

the Second Pre-Election Statement, which covers the reporting period ending October 20, 2012.

b. Collection of late filing fees and contribution forfeitures. In the FY12-13, as of October 16, the Commission collected a total of \$18,169 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$47,366, of which waiver requests are pending for \$320; and \$24,559 is pending at the Bureau of Delinquent Revenues.

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on pending accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in <b>bold</b> )
1	Johnnie Carter for Community College Board	1226264	Johnnie Carter	6/16/06	\$9,520	\$6,595	\$6,595
2	Committee to Elect M. Valle for Treasurer	1278937	Manuel B. Valle	6/14/07	\$5,525	\$5,525	\$5,525
3	Omar Khalif for Board of Educ.	1287030	Omar Khalif	7/30/09	\$1,800	\$1,775	\$1,775
4	Myrna Lim for District 11 Sup	1306882	Myrna Lim	7/30/09	\$1,180	\$1,180	\$1,180
5	Myrna Lim for District 11 Sup	1256697	Jia Jun Chen	8/20/07	\$3,855	\$2,775	\$2,775
6	San Francisco Women's Political Committee	1243711	Giselle Barry	5/16/06	\$1,906	\$50	\$50
7	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
8	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	2,658.90	\$2,658.90	2,658.90
						<b>TOTAL</b>	<b>\$24,559</b>

#### 4. Revenues report.

For FY 12-13, the Commission was budgeted to generate \$100,000 in revenues. As of October 16, 2012, the Commission received \$ 19,957 as summarized below. The figure represents collection of approximately 19 percent of expected revenues for FY 12-13.

Revenues received as of October 16, 2012:

Source	Budgeted Amount FY 12-13	Receipts
Lobbyist Fees	\$27,000	\$3,000
Other Ethics General	\$1,000	\$80

Source	Budgeted Amount FY 12-13	Receipts
Campaign Finance Fines	\$50,000	\$13,977
Campaign Consultant Fees	\$18,000	\$1,550
Lobbyist Fines	\$1,000	\$550
Statements of Economic Interests Fines	\$1,000	\$100
Other Ethics Fines	\$1,000	\$600
Campaign Consultant Fines	\$1,000	\$100
Unallocated	\$0	\$0
Total	\$100,000	\$19,957

#### 5. Lobbyist program.

As of October 16, 2012, 90 individual lobbyists were registered with the Commission. For FY 12–13, as of October 16, 2012, total revenues collected were \$3,550, including \$3,000 in lobbyist registration fees and \$550 in late fines. The filing deadline for the next lobbyist disclosure statement is November 15, 2012.

#### 6. Campaign Consultant program.

As of October 16, 2012, thirty-seven campaign consultants are registered with the Commission. \$1,550 in registration fees and \$100 in fines have been collected so far during the 2012-2013 fiscal year. The next campaign consultant quarterly report deadline is Monday, December 17, 2012. Staff will send reminders to all active campaign consultants two weeks before the deadline.

#### 7. Outreach and Education.

On October 1, staff met with a delegation from Fujian Province, China. The 16 delegates, sponsored by the Triway International Group, are charged with handling discipline and ethics issues for government employees at the provincial and local levels. They were in the U.S. to gain a better understanding of government ethics and anti-corruption practices in the U.S.

On October 8, staff made a presentation to an elections class at the USF School of Law regarding the public financing system. Staff discussed some of the changes in the law that were brought about by the Supreme Court's decision in *Arizona Free Enterprise Club's Freedom Club PAC, et al. v. Bennett*, and the concerns that were raised at interested persons meetings after the first implementation of the public financing program for Mayoral candidates in November 2011.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments.

The following are web video trainings available on the Commission website:

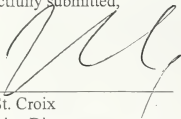
- Department of Building Inspection SIA Training
- Candidates' Training (*new version posted on September 4*)
- Controller's Office SIA Training
- Department on the Environment SIA Training

Governmental Ethics Ordinance Training for City Employees  
Lobbyist Ordinance Training  
Medical Examiner's Office SIA Training  
Non-Candidate Recipient Committee Training  
Public Utilities Commission SIA Training  
SIA Template Language Training

## 9. Records Requests

The Commission received eleven public records requests since the last meeting, nine of which required immediate disclosure of the records. Immediate disclosure requests require a response by close of business on the day following the day of the request. Otherwise, public records requests require a response within 10 days. Immediate disclosure requests cause staff to suspend their regular duties, no matter how important, to research and compile records by the deadline. Commission staff has responded to 414 public records requests in the past five years, 71% of which required immediate disclosure of the records.

Respectfully submitted,



John St. Croix  
Executive Director

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**Ethics Commission**



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF REGULAR MEETING**

**October 22, 2012 5:30 P.M.**

**and AGENDA**

**Room 400 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

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- I. Call to order and roll call.**
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**
- III. Discussion and possible action on Ethics Complaint Nos. 08110816 and 09110816, alleging that Executive Director John St. Croix and Tonia Lediju of the Controller's Office willfully violated the Sunshine Ordinance. These matters were referred to the San Jose City Attorney's Office for investigation and review. At this meeting, the Commission will deliberate on the San Jose City Attorney's Office's recommendations regarding the complaints. (Attachments: September 6, 2012 memoranda from San Jose Sr. Deputy City Attorney Lisa Herrick re Ethics Complaints No. 08-110816 and 09-110816; Responses from Complainant re Ethics Complaints No. 08-110816 and 09110816.)**
- IV. Discussion and possible action on draft amendments to the Campaign Finance Reform Ordinance (CFRO) to impose disclosure requirements on "draft committees" that support the candidacy of an identifiable person for City elective office who has not declared as a candidate. (Attachments: August 27, 2012 staff report and draft amendments.)**
- V. Discussion and possible action on Annual Report for Fiscal Year 2011-2012. The Commission will discuss the contents of a draft annual report, suggest and vote on possible amendments, and possibly adopt the report for submission to the Mayor and Board of Supervisors. (Attachment: draft annual report for FY 11-12.)**
- VI. Discussion and possible action on minutes of the Commission's regular meetings of July 23, 2012 and September 24, 2012, and special meeting of September 11, 2012. (Attachments: draft minutes of the July 23, September 11 and September 24, 2012 meetings.)**
- VII. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report**



covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: ED report.)

- VIII. Discussion on items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.
- IX. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in a meeting, please contact the Ethics Commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline is 4:00 p.m. the previous Friday. Late requests will be honored, if possible. Services available on request include the following: American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes. Please contact the Ethics Commission (415) 252-3100 to make arrangements for a disability-related modification or accommodation.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

**KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE** (Chapter 67 of the San Francisco Administrative Code): Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

**FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE**, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: [SOTF@SFGOV.ORG](mailto:SOTF@SFGOV.ORG). Copies of the Sunshine Ordinance can be

obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

**Lobbyist Registration and Reporting Requirements:** Individuals who influence or attempt to influence local policy or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 – 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100, fax (415) 252-3112; and website: [www.sfgov.org/ethics](http://www.sfgov.org/ethics).

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[DRAFT]  
 Minutes of the Regular Meeting of  
 The San Francisco Ethics Commission  
 October 22, 2012  
 Room 400, City Hall  
 1 Dr. Carlton B. Goodlett Place  
 San Francisco, CA 94102

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**I. Call to order and roll call.**

Chairperson Hur called the meeting to order at 5:30 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamienne Studley, Vice-Chairperson; and Dorothy S. Liu, Commissioner. Commissioners Hayon and Renne were excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Deputy City Attorney (DCA) [arrived at 5:32 PM].

OTHERS PRESENT: Allen Grossman; Ray Hartz; Dr. Derek Kerr; Patrick Monette-Shaw; Hope Johnson; Dr. Maria Rivero; David Pilpel; Paul Currier; Lynn Gavin; and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- September 6, 2012 memoranda from San Jose Sr. Deputy City Attorney Lisa Herrick re Ethics Complaints No. 08-110816 and 09-110816.
- Responses from Complainant re Ethics Complaints No. 08-110816 and 09-110816.
- Draft Annual Report for FY 11-12.
- Draft Minutes of the Regular Meeting of the San Francisco Ethics Commission on July 23, 2012.
- Draft Minutes of the Special Meeting of the San Francisco Ethics Commission on September 11, 2012.
- Draft Minutes of the Regular Meeting of the San Francisco Ethics Commission on September 24, 2012.
- Executive Director's Report.

**II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

Allen Grossman commented on the Commission's decision to hear Mr. Monette-Shaw's complaints. He stated that he did a records search of the Commission's files and found no internal emails between staff and Commissioners. He found an e-mail from the Chair to Mr. St. Croix regarding the "excellent analysis" in Ms. Herrick's memoranda.

Ray Hartz stated that Sunshine Ordinance section 67.16 requires that a written statement be included in the minutes. He stated that the Sunshine Ordinance Task Force has made multiple rulings and Mr. St. Croix insists on keeping the statements out because the City Attorney has stated that he can. He stated it is censorship and that it is a shame that a citizen has to fight with boards and commissions. He stated public comment is protected political free speech.

*The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

The Sunshine Ordinance, section 67.16 Minutes, reads: "Any person speaking during the public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the minutes." In SOTF case #11088, this Ethics Commission was found in violation of the ordinance. To date this Ethics Commission has both refused to comply and refused to even hear the referral by SOTF to Ethics. Why are you so afraid of having comments from the public be presented accurately in the official records of your meetings? Why do you insist on placing the 150 word summaries in an alternate location, substituting in their proper place your censored version of those comments? And, why have the members of this Ethics Commission abdicated their responsibility to Executive Director, John St Croix, in matter which go to the very heart of their open and honest operations?

Dr. Derek Kerr commented on the Executive Director's report and the Annual Report. He stated that there is no information in either report about whistleblower retaliation or in the minutes. He stated that the Controller had reported 17 complaints, but none were substantiated. He asked the Commission to consider adding retaliation to the categories of complaints listed in the Director's report and Annual Report in order to raise awareness and give visibility to the Commission's work.

*The following written summary was provided by the speaker, Dr. Derek Kerr. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

As you know, the protection of whistleblowers is one of your mandates. It's in Article IV of the Campaign & Governmental Conduct Code. But your work in this area is invisible. Nothing about whistleblower retaliation complaints is mentioned in your director's reports – or annual reports. Recently, the Controller's Whistleblower Program has been logging retaliation complaints. 17 this year – none substantiated. Since 1995, none have been substantiated by this body. Each year, you are required to present a report to the Board of Supervisors. One requirement is to note the number of complaints received. Another is to report; "the type of conduct complained about" Please consider adding "whistleblower retaliation" to the categories of complaints in the director's – and the annual report. It would raise awareness about the issue. And give visibility to your work – and to the work of whistleblowers.

Patrick Monette-Shaw noted that there had been no response from the Mayor regarding last month's inquiry. He stated that the Commission should not hear his complaints. He stated that, in 2007, Deputy Director Ng violated the Sunshine Ordinance and that complaint was referred to Oakland. He stated that San Jose City Attorney had submitted a flawed analysis.

Hope Johnson commented on Agenda Item 3. She stated that the conflict needs to be addressed so that the majority of people feel comfortable.

Dr. Maria Rivero underscored Dr. Kerr's comments. She questioned whether the Commission is doing what it is supposed to be doing.

### **III. Discussion and possible action on Ethics Complaint Nos. 08110816 and 09110816, alleging that Executive Director John St. Croix and Tonia Lediju of the Controller's Office willfully violated the Sunshine Ordinance.**

The Commissioners discussed whether the Commission should handle the matter.

Patrick Monette-Shaw objected to the Commission pushing through these complaints before new regulations are adopted. He referenced a complaint against Deputy Director Ng that was sent to Oakland. He stated that Oakland developed a final recommendation and sent it back, so there is a precedent. He stated that DCA Givner has offered a personal opinion and not one issued by the City Attorney. He stated that the Commission should not be hearing these cases.

Mr. Monette-Shaw stated that this case involves public record access issues and that the Commission has wrongly applied ethics laws to a public records case. Chairperson Hur asked why the investigation was not about governmental ethics. Mr. Monette-Shaw stated that it should be framed more as elder financial abuse or misappropriation of funds. He stated that this matter was strictly about access to public records. He stated that, once an investigation is complete, the records must be released. He pointed out the differences between San Francisco Campaign and Governmental Conduct Code sections 4.105(a) and (b). He addressed flaws with Ms. Herrick's memoranda, including the inapplicability of California Evidence Code section 1040(b), California Government Code section 6254(f), and the use of any balancing test. Ms. Herrick clarified that she had not relied on California Government section 6254(f) and noted that neither the Ethics Commission nor Controller's Office had also relied on that section. Mr. Monette-Shaw asked the Commission again to send the matter to Oakland. Chairperson Hur stated that it was unclear whether the Oakland Ethics Commission is operational.

Ms. Herrick stated that the questioning of the use of a gift fund is within Charter section C3-699.13. She stated that a whistleblower complaint would be protected under that Charter section. Chairperson Hur asked about the application of Evidence Code section 1040(b)(2). Ms. Herrick stated that the necessity for preserving confidentiality exists to protect the integrity of the complaint that is made. She stated that any complainant or witness could be pressured if the complaint were open and there would be a threat of retaliation to those who may have been involved in the matter. Commissioner Liu asked whether there would be a distinction to a complainant waiving confidentiality on his or her own complaint, rather than the entire investigatory file. Ms. Herrick stated that she would not make a distinction as the confidentiality protects the integrity of the process. She stated that if the Controller were to produce a summary report or conclusion of the audit, then that would be public record not protected by that privilege.

Mr. Monette-Shaw stated that any correspondence related to this complaint is not confidential and that is part of what he had requested.

#### Public Comment:

Allen Grossman stated that the Commission cannot adjudicate these matters. He stated that Chairperson Hur cannot vote as he had a tainted view of this matter in the e-mail to Mr. St. Croix. He stated that, because he could not vote, the Commission should continue the matter as there are not enough people to hear the matter. He stated that it was a mistake for the Commission to hear the matter without an opinion stating that they are permitted to do so.

David Pilpel stated that he believed the Commission could hear the matter and it does not need to go to an outside body. He agreed with Mr. Monette-Shaw on the question of applicability of a balancing test. He stated that the investigatory file, either at the Commission or the Controller's Office, would not be subject to disclosure, but that the scope of the initial request was for correspondence related to the complaint. He stated that any such records may be subject to disclosure, although redacted.

Ray Hartz stated that the Commission meetings are now televised and the Commission is an enabler. He stated that the Commission enables other agencies to hide from public scrutiny and avoid accountability. He stated that the public records laws are being misinterpreted to protect agencies and Ethics Commission staff. He stated that the Commission needs to ensure that this process is open and fair and that Ms.

Herrick received direction from Mr. St. Croix or staff. He stated that it was an unfair advantage to argue with Mr. Monette-Shaw as he is not a lawyer and the Commission expects him to provide legal answers.

*The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

Now that this Ethics Commission is holding meetings on SFGTV, in full view of the public, it becomes more apparent how much of an "enabler" this body has been. It enables City bodies and personnel to evade their duties under law and to hide that evasion from public scrutiny. In these cases, the "whistleblower" protections are being used not to protect the whistleblowers, but to protect their targets. They are being used to hide from the public the true facts of the investigation to allow City agencies and their employees to evade accountability for their actions. They hide from the public the extent and validity of the investigative process used by Ethics staff. Public records laws are always intended to disclose rather than conceal public matters. Instead, these laws are being purposefully misinterpreted to protect not only agencies in question, but, also the Ethics Commission staff!

Dr. Derek Kerr stated that one of the things that prompted Mr. Monette-Shaw's request was that retaliation had already occurred. He stated that he understood the theoretical idea, but it does not work in reality. He stated that investigations are non-existent with the Ethics Commission and Controller. He stated that the Commission could at least disclose redacted documents like the FBI.

Paul Currier stated that the Giants are winning. He stated that if the Commission has no conflict in hearing a case against its Executive Director, then the Commissioners need to seek professional help. He stated that the case should be sent to Berkeley because they are hearing cases. He stated that it is unfair for sitting members of the Task Force to have ongoing conversations with Mr. St. Croix.

Dr. Maria Rivero stated that they wanted to know whether there was an administrative memorandum during the time that the Commission sat on the case. She stated that they would like to see that memo. She stated that they served the City for 43 years and were summarily removed.

Hope Johnson stated that Dr. Kerr wanted to know if anything had been done and that they wanted dates. She stated that money was found to be missing and it was unclear what happened to those people. She stated that the law may have been incorrectly applied.

Lynn Gavin stated that she was disturbed by what happened to the doctors. She stated that they were dismissed for doing the right thing. She stated that there was a conflict of interest.

Commissioner Liu asked Ms. Herrick about whether there is a category of correspondence not swept up in the exemption to disclosure. Ms. Herrick stated that there could be some information that would not fall within the exemption discussed. She described her conversation with Mr. St. Croix in May 2012. She stated that, after informing Mr. St. Croix that she would review the matter, she contacted Mr. Chatfield for the file and did not speak with Mr. St. Croix again. Commissioner Liu stated that if there is correspondence that may not fall under the exemption, then that should be examined. Commissioner Studley agreed.

Ms. Lediju of the Controller's Office stated that everything maintained by the Controller's Office is confidential. She stated that she was not at liberty to talk about complaints with the Commission or anyone else. She stated that there is nothing to disclose.



DCA Givner stated that correspondence in the investigatory file should remain confidential as well. Ms. Herrick stated that she did not review the file that exists at the Controller's Office or at the Ethics Commission. She suggested reviewing the files and then disclosing anything that is not protected by law.

Ms. Lediju stated that staff is methodical about documenting conversations. Chairperson Hur stated that it was unclear what the benefit would be from asking to re-review the Controller's files. DCA Givner stated that Ms. Herrick could review the documents in the Ethics Commission's files. Ms. Herrick stated that she would not want to compromise the confidentiality of the investigation, as the files are protected by the Charter. Chairperson Hur recommended finding that both the Commission and Controller's Office did not commit official misconduct or a violation of the Sunshine Ordinance. He suggested that Ms. Herrick review only correspondence that EC had with Controller's Office, to the extent that there is such correspondence. Commissioner Liu agreed.

Mr. Monette-Shaw requested that an Ethics Commissioner review the documents.

Ms. Herrick stated that she was willing to review the documents. Chairperson Hur asked for a report to the Commission explaining the results of her review.

**Motion 12-10-22-1 (Liu/Studley): Moved, seconded, and passed (3-0; Hayon and Renne excused) that the Ethics Commission find that Mr. St. Croix and Ms. Lediju Croix have not committed a willful failure to comply with the Sunshine Ordinance Task Force with respect to the investigative files of the Ethics Commission and Controller's Office; the Commission is particularly carving out correspondence with the Controller's Office that may be in the Ethics Commission's files relating to the complaints that are not privileged and the Commission directs Ms. Herrick to review those files.**

**IV. Discussion and possible action on draft amendments to the Campaign Finance Reform Ordinance (CFRO) to impose disclosure requirements on "draft committees" that support the candidacy of an identifiable person for City elective office who has not declared as a candidate.**

Chairperson Hur stated that the Commission would not be able to make a decision on this agenda item without four members and suggested continuing the matter. There were no objections.

**V. Discussion and possible action on Annual Report for Fiscal Year 2011-2012.**

Public Comment:

Dr. Derek Kerr stated that the Annual Report does not say how many whistleblower complaints were reviewed in the whole year.

Ray Hartz stated that the budget figures in the report are impossible to understand. He stated that referrals from the Task Force are still not being heard and that the Civil Grand Jury report is dismissed with only a link to the report. He stated that the average annual amount for the agency to run is \$6 million per year. He stated that it costs the Commission approximately \$500,000/month to run and he does not see the Commission doing anything.

*The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

Despite all of the complaints in this report regarding the low staffing levels, it is hard to see what benefits the public gains for expenditures of millions of dollars each year.

Even the budget figures listed in this report are impossible to understand. The latest six years range from \$3.6 million to \$8.4 million, with an average of \$6 million per year. What do the citizens of San Francisco get for this amount? Honestly, reading this report, it would seem to be not much "bang for the buck!" I've heard estimates of anywhere from \$1.2 million to \$1.8 million just for the recent "investigation" of the Sheriff! The referrals from the SOTF are still not being heard. The Civil Grand Jury report is dismissed with only a link to the report and another to the EC response. What exactly does the public get for all those millions?

Chairperson Hur stated that there is an important need to keep investigatory files confidential. He stated that the Commission must protect future whistleblowers. He stated that the notion that the Commission does not care what is in the files is unfounded and the Commission has spent a lot of time on the matter.

Paul Currier stated that the argument should apply to Eliana Lopez, as her attorney-client privilege was breached. He stated that they disclosed everything against her will.

Chairperson Hur suggested placing the highlights in order of importance or in chronological order. Executive Director St. Croix agreed to make that change. Commissioner Studley appreciated the inclusion of the future initiatives section. She wanted to bring the items on the list back to the Commission during the course of the year. Commissioner Liu agreed.

Chairperson Hur stated that he was pleased with the Commission's staff's thankless handling of procedural mechanisms of the Mirkarimi hearings. He stated that the documents were easily available and the summaries were put together efficiently. He stated that the items allowed the public to understand what the Commission had done and what the Commission planned to do.

Executive Director St. Croix clarified that the Commission's operating budget is \$2.3 million; all other funds are dedicated to public financing.

**Motion 12-10-22-2 (Studley/Liu): Moved, seconded, and passed (3-0; Hayon and Renne excused) that the Ethics Commission to adopt the Annual Report, as amended.**

#### **VI. Discussion and possible action on minutes of the Commission's regular meetings of July 23, 2012 and September 24, 2012, and special meeting of September 11, 2012.**

Mr. St. Croix stated that, in the past, it was the Commission's policy not to publish draft minutes on the website, although they have been available at the Commission office. He stated that the policy will change and that staff will post draft minutes in advance of a meeting in a format that permanently reflects the draft status.

#### **Public Comment:**

Paul Currier stated that he was upset about the bomb threat and that he was not warned to leave City Hall. He stated that the minutes reflected that the meeting was adjourned, but the actual record is not accurate. He stated that this was done in collusion with the Mayor, Chief Suhr, Steve Kawa, and Dennis Herrera. He stated that the Mayor had perjured himself and he would like federal agents to come in. He stated that he would like to see Supervisors arrested. He mentioned 300 people being evicted from Park Merced.

Ray Hartz stated that he would like someone on the Commission to show some integrity and ask Mr. St. Croix why he is so determined to keep public comments out of the official records. He specifically referenced the minutes of July 23, 2012. He stated that public comments are constitutionally protected free speech and Mr. St. Croix is taking the comments out of the record and substituting censored versions

of the comments. He stated that free speech is protected in its publication in a government document. He stated that Mr. St. Croix wants to marginalize his free speech and substitute his interpretation. He stated that the Commission does not like what the members of the public have to say and that the Commission wants to make sure it does not get into the record.

*The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.*

I believe it time for someone on this Ethics Commission to show some integrity, by asking the Executive Director, John St. Croix in public, why he is so determined to keep the actual thoughts of the public out of the official record? We are talking about Constitutionally protected political free speech. Mr. St. Croix takes that free speech out of the official record, the place is lawfully should appear, and substitutes his approved, censored version. Anyone can read these minutes and see that what I said and what Mr. St. Croix says I said are not the same. I am censored, as are other members of the public. To continue this, the Ethics Commission must show "a compelling state interest." Mr. St. Croix does not like what members of the public have to say and wants to retain the ability to marginalize that free speech and substitute his own words.

Commissioner Studley suggested a correction on the third paragraph on page 3 of the draft minutes from the September 24, 2012 meeting. She suggested changing the language from "if the Task Force meetings and has suggestions" to "if the Task Force meets and has suggestions."

**Motion 12-10-22-3 (Studley/Liu): Moved, seconded, and passed (3-0; Hayon and Renne excused) that the Ethics Commission adopt the minutes of July 23, 2012 and September 11, 2012 as drafted and adopt the minutes of September 24, 2012, as amended.**

## **VII. Discussion of Executive Director's Report.**

Mr. St. Croix stated that the November meeting will be a long meeting. He stated that Agenda Item IV from this agenda will be discussed, as will the regulations regarding Sunshine referrals. He stated that the meeting is scheduled for November 26 and that staff will endeavor to have the agenda packets prepared by November 19. He also stated that he was having difficulty rescheduling the December meeting, as it is currently scheduled for December 24. He also mentioned that staff was scheduling two Interested Persons' meetings in December regarding the Budget Analyst report's comparison with the Los Angeles Ethics Commission.

### Public Comment:

Dr. Derek Kerr commented on the chart of the first page of the report. He stated that the Director introduced this chart in 2006. He stated that the first month had a section for "whistleblower/sunshine ordinance," but that it no longer appears that way. He suggested adding a "whistleblower retaliation" section to this chart.

Ray Hartz stated that he reads these reports and wants to make meaningful comment. He stated that the report provides meaningless statistics. He asked how many complaints are referred from the Task Force. He stated that the Commission has only taken one referral from the Task Force and that was only because of the Civil Grand Jury report. He stated that it was awful to sit in meetings and watch people being denied the opportunity to speak. He stated that the Task Force made four determinations that the summaries should be included in the minutes.

## **VIII. Discussion on items for future meetings.**

Chairperson Hur asked whether the list in the Director's report could include whistleblower complaints. Mr. St. Croix stated that he would look into what additional information could be included in the report.

Public Comment:

Dr. Kerr asked Mr. St. Croix to repeat his statement.

Ray Hartz stated that the Commission could attribute negative motives to him and he did not care. He stated that he wanted to ensure that members of the public are allowed to speak and that they are allowed to access public records to speak. He stated that there are members of the public who are afraid to comment or be on television and are afraid to say that they do not like what the Commission is doing. He stated that he has tried to be polite and he stated that section 67.16 is clear.

**IX. Adjournment.**

**Motion 12-10-22-4 (Studley/Liu): Moved, seconded, and passed (3-0; Hayon and Renne excused) that the Ethics Commission adjourn.**

Public Comment:

None.

The meeting was adjourned at 8:42 PM.

Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF REGULAR MEETING**

**November 26, 2012 5:30 P.M.**

**and AGENDA**

**Room 400 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

GOVERNMENT  
DOCUMENTS DEPT

NOV 19 2012

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Discussion and possible action on draft regulations governing the Ethics Commission's handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF). Since 2010, the Commission has held several meetings to discuss regulations regarding this matter, including a joint meeting with the SOTF Compliance and Amendments Committee on April 13, 2012, and a more recent meeting on September 24, 2012. At this meeting, the Commission will continue its consideration of the draft regulations. (Attachments: November 16, 2012 staff report; Draft Ethics Commission Regulations for Violations of the Sunshine Ordinance; Draft Amendments to Ethics Commission Regulations for Investigations and Enforcement Proceedings; and a copy of San Francisco Administrative Code Chapter 67, the San Francisco Sunshine Ordinance.)
- IV. Discussion and possible action on draft amendments to the Campaign Finance Reform Ordinance (CFRO) to impose disclosure requirements on "draft committees" that support the candidacy of an identifiable person for City elective office who has not declared as a candidate. (Attachments: August 27, 2012 staff report and draft amendments.)
- V. Public Employee Performance Evaluation: Executive Director John St. Croix
- A. Public comment on all matters pertaining to Agenda Item V, including any comment pertaining to the performance evaluation of the Commission's Executive Director or whether to hold the meeting in closed session.
- B. Vote on whether to hold the meeting in closed session under Government Code section 54957(b) and Sunshine Ordinance section 67.10(b). (Action)
- C. Deliberations regarding performance of Executive Director (in open or closed session, per the Commission's vote). (Discussion and possible action)
- D. If closed session is held, reconvene in open session.

1. Discussion and vote pursuant to Sunshine Ordinance section 67.12(a) on whether to disclose any portion of the closed session discussion regarding the public employee performance evaluation. (Action.)

Motion: That the Ethics Commission (not) disclose its closed session deliberations re: public employee performance evaluation.

- VI. Discussion and possible action on minutes of the Commission's regular meeting of October 22, 2012. (Attachment: draft minutes of the October 22, 2012 meeting.)
- VII. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: Executive Director's report.)
- VIII. Discussion of items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.
- IX. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in a meeting, please contact the Ethics Commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline is 4:00 p.m. the previous Friday. Late requests will be honored, if possible. Services available on request include the following: American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes. Please contact the Ethics Commission (415) 252-3100 to make arrangements for a disability-related modification or accommodation.



**Chemical-Based Products:** In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

**KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE** (Chapter 67 of the San Francisco Administrative Code): Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

**FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE**, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: [SOTF@SFGOV.ORG](mailto:SOTF@SFGOV.ORG). Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

**Lobbyist Registration and Reporting Requirements:** Individuals who influence or attempt to influence local policy or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 – 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100, fax (415) 252-3112; and website: [www.sfgov.org/ethics](http://www.sfgov.org/ethics).

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# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

AMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: November 16, 2012

To: Members, Ethics Commission

From: John St. Croix, Executive Director

By: Catherine Argumedo, Investigator/Legal Analyst  
Garrett Chatfield, Investigator/Legal Analyst

Re: Regulations for Violations of the Sunshine Ordinance

### INTRODUCTION

The proposed regulations are intended to streamline the process for resolving complaints alleging violations of the Sunshine Ordinance, San Francisco Administrative Code Chapter 67, ("the Ordinance") that come before the Ethics Commission ("Commission"), to clarify ambiguities about the Commission's role and enforcement power under the Ordinance, to provide a standardized way in which staff must handle those complaints, and to ensure a transparent process that is open to the public.

The following proposed regulations are applicable only as to the manner in which the Commission and its staff must proceed in regards to alleged violations of the Ordinance. These regulations do not displace policies and procedures put in place by the Sunshine Ordinance Task Force ("Task Force") regarding how it handles complaints under the Ordinance; nor are these regulations intended to limit any remedies available to the Task Force under section 67.21(e), or any other provision of the Ordinance.

### BACKGROUND

Commencing in 2009, the Commission began to review its role under the Ordinance, the powers granted to it by the Ordinance, and its process for determining violations of the Ordinance that come before it either directly or by referral.

In April 2009, the Commission and the Task Force held a joint meeting to discuss the process and procedure used by the Commission to review referrals from the Task Force. On June 7, 2010, staff presented to the Commission a memorandum regarding possible regulations governing the Commission's handling of complaints alleging violations of the Ordinance to be discussed at the Commission's regular meeting on

June 14, 2010. At that meeting the Commission adopted three policy directives for staff to consider while drafting a proposed set of regulations.

Those directives were that: 1) the Commission has jurisdiction over alleged willful violations of the Sunshine Ordinance by elected official and department heads, the Commission has jurisdiction of alleged violations of the Ordinance referred from the Task Force, and the Commission has jurisdiction over complaints brought directly to the Commission; 2) the Commission may impose penalties for violations of the Ordinance; and 3) the Commission will hold public hearings for all for Task Force referrals.

Staff drafted a set of regulations and forwarded the draft to the Task Force for review and comments on August 17, 2010. The Task Force responded in writing with its own set of proposed regulations approximately one year later, on August 1, 2011. The Task Force proposal made several changes to staff's proposed draft based on the Task Force's interpretation of the Ordinance.

After reviewing the proposed changes submitted by the Task Force, and carefully reviewing the Ordinance itself, staff proposed a revised set of regulations to be considered at the Commission's regular meeting of November 14, 2011.<sup>1</sup> Those regulations proposed that, because sections 67.21 (d) and (e) outline a very specific process for the enforcement of Task Force orders, and that the Ethics Commission is not identified anywhere within section 67.21, the proper agencies for the enforcement of Task Force orders relating to the production of documents are the District Attorney and Attorney General. Thus, the regulations were written proposing that the Commission only hear complaints alleging a willful violation of the Ordinance as specified in section 67.34.

At the Commission's meeting on November 14, 2011, several members of the public and Task Force expressed their concern with staff's reading of the Ordinance, stating that the Commission not only has the power to enforce Task Force orders, but also that the Ordinance requires that the Commission must enforce those orders without any review. The Commission and Task Force scheduled a joint meeting to discuss the concerns raised at the November 2011 meeting. At the request of the Task Force, the Commission postponed holding the joint meeting until early in 2012.

On April 13, 2012, the Commission and Task Force's Compliance and Amendments Committee held a joint meeting to discuss staff's proposed regulations. The Commission came to a consensus on several issues.

First, the Commission concluded that it is one of several bodies enumerated by the Ordinance to handle alleged violations of public records and public meeting laws. Under the Ordinance the Task Force and Supervisor of Records are empowered to determine if a requested record is

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<sup>1</sup> Following the November 14, 2011 Ethics Commission meeting in which these regulations were first discussed, staff reserved the resolution of any complaints alleging violations of the Ordinance until the Commission adopted the regulations. Currently, the resolution of seven complaints awaits the adoption of these regulations. The Commission received these complaints from the Task Force between December 2011 and July 2012.

public. If they so determine and the City agency fails to release the record, then both entities must notify the district attorney or the attorney general who are tasked with enforcing the order to release the public record. (SF Admin. Code, §§ 67.21(d) and (e).) Thus, the Commission concluded that it is not charged with the enforcement of an order to release a public record under sections 67.21(d) and (e).

Second, notwithstanding the administrative remedies available under sections 67.21(d) and (e), if a custodian of a public record refuses or fails to comply with the request of any person for inspection or copying of a public record, or with an order issued by the Task Force, Supervisor of Records, District Attorney, or Attorney General, the superior court has jurisdiction to order compliance. (SF Admin Code, § 67.21(f).) Again, the Commission concluded that it is not tasked with enforcement of an order to release a public record under section 67.21(f).

Third, under the Ordinance the Task Force is required to make referrals to a municipal office with enforcement power as provided for by the Ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of the Ordinance. (SF Admin Code, § 67.30(c).) The Commission concluded that section 67.30(c) is not a mandate on the Commission to enforce Task Force orders, but that section 67.30(c) obligates the Task Force to make referrals to an agency that has enforcement power that is specified by the Ordinance.

Fourth, the Commission concluded that section 67.35(d) of the Ordinance provides the authority for the Commission to accept referrals from the Task Force, Supervisor of Records, or any other individual regarding a violation of the Ordinance. The Commission also concluded that under section 67.35(d) its role is more than simply to enforce orders by the Task Force or Supervisor of Records, but that it has independent authority to review violations of the Ordinance.

Finally, the Commission concluded that section 67.34 provides the authority to the Commission to hear matters alleging a willful violation of the Ordinance against elected officials and department heads.

At the joint meeting on April 13, 2012, the Commission directed staff to revisit its proposed regulations and draft a two-track regulation scheme as was discussed at the joint meeting. The Commission discussed and adopted the following policy directives:

1. Pursuant to Sunshine Ordinance section 67.34, the Commission has jurisdiction over complaints alleging willful violations of the Ordinance by elected officials and department heads. The Commission also has jurisdiction over complaints alleging (a) non-willful violations of the Ordinance by elected officials and department heads, (b) willful violations of the Ordinance by all City officers and employees, and (c) non-willful violations of the Ordinance by all City officers and employees.
2. Under the Ordinance, the Commission is not bound by the Task Force's prior determinations regarding complaints. But the Task Force may continue to refer complaints, in its discretion, to the Commission.

3. Except as they relate to willful violations by elected officials and department heads, referrals from the Task Force will be handled by the Commission through a Show Cause Hearing in which the Respondent(s) bears the burden of proof and must demonstrate the Task Force erred in its determination.
4. The Commission has the jurisdiction to establish penalties for violations of the Ordinance, including whether to impose monetary fines or other penalties or to find official misconduct by elected officials and department heads.

Following those directives, staff drafted a revised set of regulations. On September 24, 2012, the Commission held a regular meeting in which it considered the revised regulations. After listening to multiple concerns raised by the public, and former and current members of the Task Force, the Commission directed staff to revise the regulations again.

In drafting the following proposed regulations, staff has incorporated the discussions, directives, and input from the public, Task Force, and the Commission that have occurred since beginning this process in 2009. This memo presents seven decision points for the Commission's consideration, followed by a final decision point to adopt the regulations as a whole.

In order to facilitate the adoption of these regulations, staff requests that any changes the Commission would like to make to a proposed section be stated in the motion adopting that section. Staff may then craft the regulations per the Commission's changes, if any.

Under Charter section 15.102, the Commission may adopt regulations addressing ordinances within its jurisdiction. A regulation adopted by the Commission shall become effective 60 days after the date of its adoption unless before the expiration of the 60-day period, two-thirds of all members of the Board of Supervisors vote to veto the regulation.

Staff has also included copies of the following documents with this memorandum for reference: (1) Proposed Regulations for Violations of the Sunshine Ordinance; (2) Proposed amended Regulations for Investigations and Enforcement Procedures; and (3) the Sunshine Ordinance.

## **PROPOSED REGULATIONS**

### **CHAPTER ONE**

#### **I. PREAMBLE**

Pursuant to San Francisco Charter, section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, San Francisco Administration Code, section 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other governmental ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

## II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

- A. "Brown Act" means California Government Code section 54950, et seq.
- B. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- C. "California Public Records Act" means California Government Code section 6250, et seq.
- D. "City" means the City and County of San Francisco.
- E. "City officer" means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.
- F. "Commission" means the Ethics Commission.
- G. "Complaint" means a Task Force referral or a referral from the Supervisor of Records, a written document submitted directly to the Ethics Commission alleging a violation of the Sunshine Ordinance, or a matter initiated by Ethics Commission staff alleging a violation of the Sunshine Ordinance.
- H. "Complainant" means a person or entity that initiated a matter with the Task Force, Supervisor of Records, or Commission alleging a violation of the Sunshine Ordinance. "Complainant" shall also mean the Commission if the matter was initiated by Commission staff.
- I. "Custodian" means a City officer or employee having custody of any public record.
- J. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.
- K. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson may order that the delivery of briefs or other materials be accomplished by e-mail.
- L. "Elected official" shall mean the Mayor, a Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, a Member of the Board of Education of the San Francisco Unified School District, and a Member of the Governing Board of the San Francisco Community College District.
- M. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

N. "Exculpatory information" means information tending to show that the Respondent has not committed the alleged violation(s).

O. "Order of Determination" means: 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.

P. "Public Records" means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, and/or Sunshine Ordinance section 67.20(b).

Q. "Referral" means a document from the Task Force or Supervisor of Records to the Commission finding a violation of the Sunshine Ordinance.

R. "Respondent" means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.

S. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.

T. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

U. "Willful violation" means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

**Decision Point 1:** Shall the Commission approve the language set forth above in Chapter One of the proposed Regulations?

## **CHAPTER TWO**

### **I. REFERRALS TO THE ETHICS COMMISSION**

#### **A. Matters to be heard in a Show Cause Hearing.**

1. Under this Chapter, the Ethics Commission will conduct a Show Cause Hearing on any referral, as defined by these Regulations, finding:

a. willful violations of the Sunshine Ordinance by City officers and employees (other than elected officials or department heads), or

b. non-willful violations of the Sunshine Ordinance by elected officials, department heads, or City officers and employees.



2. Complaints alleging willful violations of the Sunshine Ordinance against elected officials and department heads shall be handled pursuant to Chapter Three of these regulations.

**B. Scheduling of Show Cause Hearing.**

After receipt of a referral, the Commission shall schedule a Show Cause Hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause Hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

**II. SHOW CAUSE HEARING**

**A. Public Hearing.** The Show Cause Hearing shall be open to the public.

**B. Standard of Proof.** The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.

**C. Hearing Procedures.**

1. Each Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

2. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

3. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

**D. Deliberations and Findings.**

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a

Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

3. To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that, based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

#### **E. Ethics Commission Orders.**

1. If the Commission finds that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders requiring any or all of the following:

- a. the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or
- b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or
- c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.

2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.

3. After issuing an order or instructing the Executive Director to act, or upon a finding of no violation, the Commission will take no further action on the matter.

#### **F. Public Announcement.**

Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission will publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.

**Decision Point 2:** Shall the Commission approve the language set forth above in Chapter Two of the proposed Regulations?

### **CHAPTER THREE**

#### **I. COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE SUNSHINE ORDINANCE BY ELECTED OFFICIALS OR DEPARTMENT HEADS OR COMPLAINTS FILED DIRECTLY WITH THE ETHICS COMMISSION ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE.**

**A. Matters heard under this Chapter.**

1. Pursuant to Sunshine Ordinance, section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.
2. Pursuant to Sunshine Ordinance, section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply.
3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance against any City officer or City employee.
4. This Chapter will govern:
  - a. referrals alleging willful violations of the Sunshine Ordinance against an elected official or department head, and
  - b. complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or employee.
5. Any referral that does not allege a willful violation of the Sunshine Ordinance against an elected official or a department head shall be handled pursuant to Chapter Two of these regulations.

**B. Scheduling of Hearing.**

1. When the Executive Director receives a referral alleging a willful violation of the Sunshine Ordinance against an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall, within 15 business days of the conclusion of his or her investigation, schedule a public hearing at the next regular meeting of the Commission provided that the hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.
2. Within 15 business days of the conclusion of his or her investigation, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.
3. In the case of a referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the referring body.

## **II. INVESTIGATION AND RECOMMENDATION**

### **A. Factual Investigation.**

Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.

### **B. Subpoenas.**

During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

### **C. Report and Recommendation.**

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.

2. The report shall recommend one of the following:

- a. that Respondent(s) willfully violated the Sunshine Ordinance;
- b. that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or
- c. that Respondent(s) did not violate the Sunshine Ordinance.

### **D. Response to the Report and Recommendation.**

1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.

2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.

### **III. PUBLIC HEARING**

#### **A. General Rules and Procedures.**

1. The hearing shall be open to the public.

2. Each Complainant and Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

4. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, Section I.E, then the Commission may make a decision in the party's absence.

5. Except when a complaint is staff-initiated or initiated pursuant to section 67.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.

#### **B. Deliberations and Findings.**

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

3. In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a

violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

**C. Ethics Commission Orders.**

1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority, or the Mayor if Respondent is an elected official. In addition, the Commission may issue orders requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance:

- a. the Respondent to cease and desist the violation and/or produce the public record(s); and/or
  - b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent violated the Sunshine Ordinance; and/or
  - c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority, or the Mayor if the Respondent is an elected official, of the violation.
2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.
3. After issuing an order or instructing the Executive Director to act, the Commission will take no further action on the matter.

**D. Finding of No Violation.**

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission will take no further action on the matter.

**Decision Point 3:** Shall the Commission approve the language set forth above in Chapter Three of the proposed Regulations?

**CHAPTER FOUR**

**I. MISCELLANEOUS PROVISIONS**

**A. Ex Parte Communications.**

Once a complaint is filed with the Commission, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of the complaint with the



Commission's staff, the Respondent(s), the Complainant(s), any member of the Task Force, the Supervisor of Records, any member of the public, or any person communicating on behalf of the Respondent(s), Complainant(s), the Supervisor of Records, or any member of the Task Force, except for communications, such as scheduling matters, generally committed between a court and a party appearing before that court.

**B. Access to Complaints and Related Documents and Deliberations.**

Complaints, investigative files and information contained therein, shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

**C. Oaths and Affirmations.**

The Commission may administer oaths and affirmations.

**D. Selection of Designee by the Executive Director.**

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.

**E. Extensions of Time and Continuances.**

1. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chairperson shall have the discretion to consider untimely requests. The Commission Chairperson shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson may grant the request upon a showing of good cause.

2. The Commission or the Commission Chairperson may reschedule a hearing at their discretion for good cause.

**F. Place of Delivery.**

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these Regulations require delivery to a Respondent or Complainant, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of



delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent or Complainant.

3. Delivery is effective upon the date of delivery, not the date of receipt.
4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

#### **G. Page Limitations and Format Requirements.**

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

#### **H. Conclusion of Hearing.**

For the purposes of these Regulations, a hearing concludes on the date on which the Commission announces its decision.

#### **I. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.**

If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.

#### **II. SEVERABILITY**

If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

**Decision Point 4:** Shall the Commission approve the language set forth above in Chapter Four of the proposed Regulations?

#### **CLEAN-UP LANGUAGE FOR EXISTING REGULATIONS**

If the Commission adopts the proposed Sunshine Regulations, it should also amend the existing Enforcement Regulations, which will continue to apply to all enforcement matters that do not involve allegations of Sunshine violations. The proposed amendments would: a) clarify that all complaints alleging a violation of the Sunshine Ordinance will be governed by the new Sunshine enforcement regulations; b) delete references in the existing Regulations to violations of the Sunshine Ordinance; and c) amend the definition of "business day" by adding the language "or a

day on which the Commission office is closed for business” to conform with the definition in the proposed Sunshine regulations.

**Decision Point 5:** Shall the Commission approve the addition of Section III.D. as set forth on page 3 of the current Regulations?

**Decision Point 6:** If the answer to Decision Point 5-1 is yes, shall the Commission approve the deletion of other references to the Sunshine Ordinance in the current Regulations? *(See strikethrough language in Attachment B, pages 2, 7, 15, and 16.)*

**Decision Point 7:** Shall the Commission approve the amended definition of “business day” of Section II.A. on page 1 of the current Regulations?

**Decision Point 8:** Shall the Commission approve the regulations to handle violations of the San Francisco Sunshine Ordinance in its entirety as proposed or amended by the Commission at its meeting on November 26, 2012?



San Francisco  
Ethics Commission



25 Van Ness Ave., Suite 220  
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Phone 252-3100 Fax 252-3112

**ATTACHMENT A**

**ETHICS COMMISSION REGULATIONS FOR  
VIOLATIONS OF THE SUNSHINE ORDINANCE**

*Effective Date:* \_\_\_\_\_, 2013

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## CHAPTER ONE

### I. PREAMBLE

Pursuant to San Francisco Charter, section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, San Francisco Administration Code, section 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other governmental ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

### II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

- A. "Brown Act" means California Government Code section 54950, et seq.
- B. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- C. "California Public Records Act" means California Government Code section 6250, et seq.
- D. "City" means the City and County of San Francisco.
- E. "City officer" means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.
- F. "Commission" means the Ethics Commission.
- G. "Complaint" means a Task Force referral or a referral from the Supervisor of Records, a written document submitted directly to the Ethics Commission alleging a violation of the Sunshine Ordinance, or a matter initiated by Ethics Commission staff alleging a violation of the Sunshine Ordinance.
- H. "Complainant" means a person or entity that initiated a matter with the Task Force, Supervisor of Records, or Commission alleging a violation of the Sunshine Ordinance. "Complainant" shall also mean the Commission if the matter was initiated by Commission staff.
- I. "Custodian" means a City officer or employee having custody of any public record.

J. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.

K. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson may order that the delivery of briefs or other materials be accomplished by e-mail.

L. "Elected official" shall mean the Mayor, a Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, a Member of the Board of Education of the San Francisco Unified School District, and a Member of the Governing Board of the San Francisco Community College District.

M. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

N. "Exculpatory information" means information tending to show that the Respondent has not committed the alleged violation(s).

O. "Order of Determination" means: 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.

P. "Public Records" means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, and/or Sunshine Ordinance section 67.20(b).

Q. "Referral" means a document from the Task Force or Supervisor of Records to the Commission finding a violation of the Sunshine Ordinance.

R. "Respondent" means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.

S. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.

T. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.



U. "Willful violation" means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

## **CHAPTER TWO**

### **I. REFERRALS TO THE ETHICS COMMISSION**

#### **A. Matters to be heard in a Show Cause Hearing.**

1. Under this Chapter, the Ethics Commission will conduct a Show Cause Hearing on any referral, as defined by these Regulations, finding:

- a. willful violations of the Sunshine Ordinance by City officers and employees (other than elected officials or department heads), or
- b. non-willful violations of the Sunshine Ordinance by elected officials, department heads, or City officers and employees.

2. Complaints alleging willful violations of the Sunshine Ordinance against elected officials and department heads shall be handled pursuant to Chapter Three of these regulations.

#### **B. Scheduling of Show Cause Hearing.**

After receipt of a referral, the Commission shall schedule a Show Cause Hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause Hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

### **II. SHOW CAUSE HEARING**

**A. Public Hearing.** The Show Cause Hearing shall be open to the public.

**B. Standard of Proof.** The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.

#### **C. Hearing Procedures.**

1. Each Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

2. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later

than five days prior to the scheduled hearing. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

3. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

#### **D. Deliberations and Findings.**

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

3. To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that, based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

#### **E. Ethics Commission Orders.**

1. If the Commission finds that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders requiring any or all of the following:

- a. the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or
- b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or
- c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.

2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.

3. After issuing an order or instructing the Executive Director to act, or upon a finding of no violation, the Commission will take no further action on the matter.

**F. Public Announcement.**

Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission will publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.

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### CHAPTER THREE

**I. COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE  
SUNSHINE ORDINANCE BY ELECTED OFFICIALS OR  
DEPARTMENT HEADS  
OR  
COMPLAINTS FILED DIRECTLY WITH THE ETHICS COMMISSION  
ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE.**

**A. Matters heard under this Chapter.**

1. Pursuant to Sunshine Ordinance, section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.
2. Pursuant to Sunshine Ordinance, section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply.
3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance against any City officer or City employee.
4. This Chapter will govern:
  - a. referrals alleging willful violations of the Sunshine Ordinance against an elected official or department head, and
  - b. complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or employee.
5. Any referral that does not allege a willful violation of the Sunshine Ordinance against an elected official or a department head shall be handled pursuant to Chapter Two of these regulations.

**B. Scheduling of Hearing.**

1. When the Executive Director receives a referral alleging a willful violation of the Sunshine Ordinance against an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall, within 15 business days of the conclusion of his or her investigation, schedule a public hearing at the next regular meeting of the Commission provided that the hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. Within 15 business days of the conclusion of his or her investigation, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.

3. In the case of a referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the referring body.

## **II. INVESTIGATION AND RECOMMENDATION**

### **A. Factual Investigation.**

Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.

### **B. Subpoenas.**

During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

### **C. Report and Recommendation.**

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.

2. The report shall recommend one of the following:

a. that Respondent(s) willfully violated the Sunshine Ordinance;

- b. that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or
- c. that Respondent(s) did not violate the Sunshine Ordinance.

**D. Response to the Report and Recommendation.**

1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.
2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.

**III. PUBLIC HEARING**

**A. General Rules and Procedures.**

1. The hearing shall be open to the public.
2. Each Complainant and Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.
3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.
4. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, Section I.E, then the Commission may make a decision in the party's absence.
5. Except when a complaint is staff-initiated or initiated pursuant to section 67.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.



**B. Deliberations and Findings.**

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.
2. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.
3. In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

**C. Ethics Commission Orders.**

1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority, or the Mayor if Respondent is an elected official. In addition, the Commission may issue orders requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance:
  - a. the Respondent to cease and desist the violation and/or produce the public record(s); and/or
  - b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent violated the Sunshine Ordinance; and/or
  - c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority, or the Mayor if the Respondent is an elected official, of the violation.
2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.
3. After issuing an order or instructing the Executive Director to act, the Commission will take no further action on the matter.

**D. Finding of No Violation.**

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission will take no further action on the matter.

## CHAPTER FOUR

### **I. MISCELLANEOUS PROVISIONS**

#### **A. Ex Parte Communications.**

Once a complaint is filed with the Commission, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of the complaint with the Commission's staff, the Respondent(s), the Complainant(s), any member of the Task Force, the Supervisor of Records, any member of the public, or any person communicating on behalf of the Respondent(s), Complainant(s), the Supervisor of Records, or any member of the Task Force, except for communications, such as scheduling matters, generally committed between a court and a party appearing before that court.

#### **B. Access to Complaints and Related Documents and Deliberations.**

Complaints, investigative files and information contained therein, shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

#### **C. Oaths and Affirmations.**

The Commission may administer oaths and affirmations.

#### **D. Selection of Designee by the Executive Director.**

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.

#### **E. Extensions of Time and Continuances.**

1. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chairperson shall have the discretion to consider untimely requests. The Commission Chairperson shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson may grant the request upon a showing of good cause.

2. The Commission or the Commission Chairperson may reschedule a hearing at their discretion for good cause.

**F. Place of Delivery.**

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these Regulations require delivery to a Respondent or Complainant, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent or Complainant.

3. Delivery is effective upon the date of delivery, not the date of receipt.

4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

**G. Page Limitations and Format Requirements.**

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

**H. Conclusion of Hearing.**

For the purposes of these Regulations, a hearing concludes on the date on which the Commission announces its decision.

**I. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.**

If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.

**II. SEVERABILITY**

If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the

applicability of such provisions to other persons and circumstances shall not be affected thereby.

DRAFT

## ATTACHMENT B

San Francisco  
Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

# ETHICS COMMISSION REGULATIONS FOR INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS

*Effective Date: July 5, 1997*

*Includes technical amendments effective April 13, 2002;*

*Streamlined Process for Complaints Alleging a Failure to File Campaign Finance Disclosure*

*Reports effective August 15, 2004; amendments effective October 10, 2005;*

*amendments effective March 10, 2006; amendments effective November 10, 2006; amendments effective December 18, 2009; and amendments effective January 8, 2010*

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## **I. PREAMBLE**

These Regulations of the San Francisco Ethics Commission are promulgated in order to ensure the fair, just, and timely resolution of complaints presented to the Commission that allege violations of laws within the Commission's jurisdiction by:

1. Setting and maintaining objective standards for the investigation and prosecution of matters brought before the Commission;
2. Eliminating any political or improper influence in the investigation and prosecution of persons accused of ethics violations;
3. Protecting the privacy rights of those accused of ethics violations by maintaining the confidentiality of complaints filed with, and investigations conducted by, the Commission;
4. Setting and enforcing reasonable time limits within which enforcement proceedings should be completed;
5. Coordinating and sharing with other governmental agencies the responsibility for investigations and prosecutions of complaints, whenever consistent with the interests of justice;
6. Delegating to the Commission staff maximum discretion in the handling and resolution of complaints at staff level, while retaining oversight of those staff activities.

## **II. DEFINITIONS**

For purposes of these Regulations, the following definitions shall apply:

- A. "Business day" means any day other than a Saturday, Sunday, or City holiday, or a day on which the Commission office is closed for business.
- B. "City" means the City and County of San Francisco
- C. "Commission" means the Ethics Commission.
- D. "Complainant" means a person or entity that makes a complaint.
- E. "Credible" means offering reasonable grounds for being believed.
- F. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next working day.

G. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity or to an agent authorized to accept delivery on behalf of the person or entity. For purposes of these Regulations, delivery may be made by leaving copies of the material with a responsible person at either the residence or place of business of the person or entity to whom the material is directed. The Commission, the Executive Director or a respondent receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, following a determination of probable cause, the Commission Chair or designated Commissioner or hearing officer may order that delivery of briefs or other materials be accomplished by e-mail.

H. "Enforcement action" means an action pursuant to San Francisco Charter section C3.699-13.

I. "Exculpatory information" means information tending to show that the respondent is not guilty of the alleged violations.

J. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

K. "Mitigating information" means information tending to excuse or reduce the significance of the respondent's conduct.

L. "Probable cause" means that based on the evidence presented there is reason to believe that the respondent committed a violation of law.

M. "Respondent" means a person or entity that is alleged in a complaint to have committed a violation of law.

N. "Stipulated order" means an order regarding a complaint the terms of which have been agreed to by both the Executive Director and the respondent.

O. "Violation of law" means a violation of City laws relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics, and State laws relating to campaign finance, conflicts of interest, or governmental ethics, including, but not limited to: San Francisco Charter section 15.100 et seq. and Appendix C (ethics); the San Francisco Campaign and Governmental Conduct Code; ~~the San Francisco Sunshine Ordinance, S.F. Administrative Code Ch. 67;~~ the Political Reform Act of 1974, Government Code section 81000 et seq.; Government Code section 1090 et seq.; and Government Code section 3201, et seq.

### **III. COMPLAINTS**

#### **A. Formal Complaints.**

1. Any person or entity may file a formal complaint alleging a violation of law. Formal complaints must be made in writing on a form specifically provided by the

Commission staff. Formal complaints must include the following information, upon the complainant's information and belief:

- (a) the name and address of the respondent;
- (b) the provision(s) of law allegedly violated;
- (c) the facts constituting the alleged violation(s);
- (d) the names and addresses of witnesses, if any; and
- (e) identification of documents or other evidence which may prove the facts constituting the alleged violation(s), if any.

2. Formal complaints may be filed anonymously. Any formal complaint not filed anonymously must be verified and signed by the complainant under penalty of perjury. If the complainant is an entity, the complaint must be verified and signed under penalty of perjury by an authorized officer or agent of the entity.

3. The Executive Director shall process and review all formal complaints, following the process described in Section IV.

**B. Informal Complaints.** Any person or entity may file an informal complaint alleging a violation of law by submitting a complaint by telephone, in person, or in writing other than on the form prescribed by the Commission. The Executive Director shall have no obligation but has the discretion to process and review informal complaints.

**C. Complaints Initiated by the Executive Director.** The Executive Director may initiate complaints. These complaints need not conform to the requirements for formal complaints specified in subsection A of this Section.

**D. Complaints Alleging a Violation of the Sunshine Ordinance.** *Any complaint that alleges a violation of the San Francisco Sunshine Ordinance shall be governed by the Ethics Commission Regulations for Complaints Alleging Violations of Sunshine Ordinance.*

#### **IV. REVIEW OF COMPLAINTS**

**A. Preliminary Review.** The Executive Director must conduct a preliminary review of each formal complaint. This inquiry may include reviewing relevant documents, communicating with the complainant, communicating with the respondent, and any other inquiry to determine whether a full investigation is warranted.

**B. Dismissal of Complaint.** Based on the allegations and information contained in a complaint, and the Executive Director's preliminary review, the Executive Director may dismiss the complaint if the allegations do not warrant further action for reasons that may include, but are not limited to:

1. Credible evidence clearly refutes the allegations.
2. The allegations, if true, do not constitute a violation of law within the Commission's jurisdiction.
3. The complaint contains an expression of opinions, rather than specific allegations.
4. The allegations contained in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.

If the Executive Director dismisses a complaint under this section, the Executive Director shall take no further action on the complaint, except that he or she may: 1) inform the complainant of the Executive Director's decision; 2) at his or her discretion, issue a warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

The Executive Director shall provide a monthly summary to the Commission of each complaint dismissed, including the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

**C. There is Reason to Believe a Violation May Have Occurred.** If, based on the allegations and information contained in a complaint, and the Executive Director's preliminary review, the Executive Director determines that there is reason to believe that a violation of law may have occurred, the Executive Director shall immediately forward the complaint to the District Attorney and the City Attorney.

Within ten business days after receipt of the complaint, the District Attorney and City Attorney shall inform the Commission whether the District Attorney or City Attorney has initiated or intends to pursue an investigation of the complaint.

If neither the District Attorney nor City Attorney intends to pursue an investigation, the Executive Director shall, within 14 days of such notification, inform the complainant in writing of the action, if any, that he or she has taken or plans to take on the complaint, together with the reasons for such action or non-action. If the Executive Director has not informed the complainant of the action that he or she has taken or plans to take on the complaint within 14 days, the complainant shall be notified of the reasons for the delay and shall subsequently receive notification as provided above.

## **V. CONDUCT OF INVESTIGATIONS**

**A. Factual Investigation.** The Executive Director's investigation may include, but shall not be limited to, the interview of the respondent(s) and any witnesses, the deposition of respondent(s) and/or witnesses, and the review of documentary and other evidence.

**B. Subpoenas.** During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

**VI. DETERMINATION THAT THERE IS NOT PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED**

**A. Executive Director Determination and Calendaring.** If the Executive Director determines that there is not probable cause to believe that a violation of law has occurred, the Executive Director shall inform the Commission of that determination and provide clear and concise reasons supporting that determination. Thereafter any two or more members of the Commission may cause the item to be calendared for consideration by the full Commission in a closed session at the next Commission meeting held no sooner than ten days after the date the Executive Director informs the Commission of the Executive Director's determination. Commissioner's requests that a complaint be calendared for consideration by the full Commission must be received by the Executive Director not less than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

**B. Commission Decision Not to Dismiss.** If the matter is calendared for consideration by the Commission, and if the Commission decides that there is reason to believe that a violation of law may have occurred, the Commission shall direct the Executive Director either to investigate the matter further or to prepare a probable cause report and schedule a probable cause hearing.

**C. Commission Decision to Dismiss.** If the matter is calendared for consideration by the Commission, and if the Commission decides that there is not reason to believe that a violation of law may have occurred, the Commission shall take no further action on the complaint other than: 1) inform the complainant and respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

**D. Commission Decision Not to Calendar.** If the Executive Director determines that there is not probable cause to believe that a violation of law has occurred, and if after the Executive Director informs the Commission of the determination the Commission does not calendar the matter for consideration pursuant to section VI(A), the Executive Director shall take no further action except that he or she may: 1) inform the complainant and respondent of the Executive Director's decision; 2) at his or her discretion, issue a warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

**VII. RECOMMENDATION THAT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED**

**A. Probable Cause Report.** When the Executive Director determines there is probable cause to believe a violation of law has occurred, the Executive Director shall prepare a written “probable cause report” and schedule a probable cause hearing. The probable cause report shall contain a summary of the laws that the Executive Director believes the respondent(s) violated and evidence gathered through the investigation, including any exculpatory and mitigating information. In the probable cause report, the Executive Director may present statements including hearsay, declarations of investigators or others relating to the statements of witnesses, or the examination of physical evidence. Unless otherwise permitted by the Commission Chair or the Commission Chair’s designee for good cause shown, the probable cause report shall not exceed 25 pages excluding attachments.

**B. Delivery of Probable Cause Report and Notice of Probable Cause Hearing.** The Executive Director shall deliver to each respondent a copy of the probable cause report, with written notice of the date, time and location of the probable cause hearing, at least 45 days in advance of the hearing date. The notice shall inform each respondent that he or she has the right to be present and represented by counsel at the probable cause hearing.

**C. Response to the Probable Cause Report.**

1. Each respondent may submit a written response to the probable cause report. The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information. Unless otherwise permitted by the Commission Chair or the Commission Chair’s designee for good cause shown, the response shall not exceed 25 pages excluding attachments.

2. Each respondent who submits a response must deliver the response no later than 20 days prior to the date of the probable cause hearing. Unless the parties agree to deliver materials by email, the respondent must deliver a total of eight copies of the response to the Executive Director. The Executive Director must then immediately distribute copies of the response to the Commission. The respondent must also deliver one copy of the response to every other respondent named in the probable cause report.

**D. Rebuttal.** The Executive Director may submit evidence or argument in rebuttal to a response. If the Executive Director chooses to do so the Executive Director must deliver the rebuttal to the Commission and each respondent named in the probable cause report no later than seven days prior to the date of the probable cause hearing. Unless otherwise permitted by the Commission Chair or the Commission Chair’s designee for good cause shown, the rebuttal shall not exceed ten pages excluding attachments.

**VIII. PROBABLE CAUSE HEARING; DETERMINATION OF WHETHER AND HOW TO PROCEED WITH A HEARING ON THE MERITS**

**A. General Rules and Procedures.**



1. Unless otherwise decided by the Commission, the Commission shall sit as a hearing panel to conduct the probable cause hearing. The Commission may assign one of its members to conduct the probable cause hearing and submit a report and recommendation to the Commission.

2. *Except for hearings regarding alleged willful violations of the Sunshine Ordinance, the hearing shall be closed to the public to the extent permitted by state law, unless the respondent requests that the probable cause hearing be held in public. Probable cause hearings regarding alleged willful violations of the Sunshine Ordinance shall be held at a public meeting unless otherwise provided in state or local law.*

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the probable cause hearing. Neither the Executive Director nor the respondent(s) may present live witness testimony at the probable cause hearing.

4. The Commission may find that there is probable cause to believe a violation of law has occurred only if a person of ordinary caution and prudence would conclude, based on the evidence, that there is a reasonable ground to suspect that the respondent has committed the violation.

#### **B. Probable Cause Determination.**

1. If the Commission as a whole conducts the probable cause hearing, the Commission shall make the probable cause determination no later than 45 days after the date the hearing is concluded. If the Commission assigns one of its members to conduct the probable cause hearing, the assigned member shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing concludes, and the Commission shall make the probable cause determination no later than 45 days after the assigned member delivers his or her report and recommendation.

2. A determination that there is probable cause to believe that a violation of law has occurred shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard or read the testimony (either in person or by listening to a tape or reading the transcript prepared by a court reporter) and reviewed the evidence, or otherwise reviewed the entire record.

3. The Commission shall not make a finding of probable cause if it is presented with clear and convincing evidence that, prior to the alleged violation:

(a) the respondent had requested and obtained a written opinion from the Commission;

(b) the respondent, in requesting the opinion, disclosed truthfully all the material facts pertinent to the case;



(c) the Commission or its staff issued a formal, written opinion with which both the District Attorney and City Attorney concurred; and

(d) the respondent committed the acts or violations alleged in the complaint in good-faith reliance upon the formal, written opinion of the Commission.

4. If the Commission determines that there is not probable cause to believe a violation has occurred, the Commission shall dismiss the complaint and take no further action on the complaint, except: 1) inform the complainant and each respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

5. If the Commission determines that there is probable cause to believe a violation of law has occurred, the Commission shall announce its determination in open session. The announcement shall contain a summary of the allegations for which the Commission determines there is probable cause to believe a violation of law has occurred and a cautionary statement that each respondent is presumed to be innocent unless and until such time that the allegations are proved in a subsequent hearing on the merits.

#### **C. Determination How to Proceed with Hearing on Merits.**

1. Following a determination of probable cause by the Commission, the Commission shall proceed with a hearing on the merits of the complaint. Unless otherwise decided by the Commission, the Commission shall sit as the hearing panel to hear the merits of the case. The Commission may also sit as the hearing panel to hear the case, with an outside hearing officer presiding, or designate an individual Commissioner or an outside hearing officer to hear the case and file a report and recommendation for decision by the Commission.

2. The Commission shall provide for resolution of preliminary matters in advance of the hearing on the merits. Unless otherwise decided by the Commission, the Commission Chair shall hear and decide preliminary matters pursuant to Section X, subsection B. The Commission alternatively may designate an individual Commissioner or an outside hearing officer to hear and decide preliminary matters.

3. The Commissioner or hearing officer assigned to decide preliminary matters shall also be authorized to provide for the issuance of subpoenas.

#### **D. Amending Probable Cause Determination.**

Before the Executive Director has scheduled the hearing on the merits, or no later than 60 days prior to the date the hearing on the merits is scheduled to commence, the Executive Director may request that the Commission amend the probable cause determination to add or amend allegations or charges against the respondent. If the Executive Director seeks to amend the probable cause determination, the Executive Director, the

respondent(s) and the Commission shall follow the procedures set forth in Sections VII and VIII, and the Executive Director shall issue an amended accusation and notice of the hearing on the merits following the procedures set forth in Section IX.

**IX. ISSUANCE OF ACCUSATION; SCHEDULING AND NOTICE OF HEARING ON MERITS**

**A. Issuance of Accusation.**

Except as provided in Section XI, following a determination of probable cause by the Commission, the Executive Director shall issue an accusation. The accusation shall clearly specify the provisions of the laws that each respondent allegedly violated and shall set forth the acts or omissions with which each respondent is charged. The accusation shall list only those charges for which the Commission made a determination of probable cause. The Executive Director shall deliver a copy of the accusation to each respondent ten days after the Commission's probable cause determination. The accusation is a public document.

The Executive Director shall present the case in support of the accusation at the hearing on the merits. The accusation shall be the charging document for the purpose of the hearing on the merits. The commission shall not find that any respondent has committed a violation of law if the accusation does not allege such a violation and provide the respondent notice of the basis for the allegation.

**B. Scheduling and Notice of Hearing on Merits.**

The Executive Director shall schedule the hearing on the merits, and deliver written notice of the date, time and location of the commencement of the hearing to each respondent at least 45 days prior to the commencement of the hearing. The notice shall be in substantially the following form:

"You are hereby notified that a hearing will be held before the Ethics Commission (or name of hearing officer or assigned Commissioner) at \_\_\_\_ on the \_\_ day of \_\_, 20 \_\_, at the hour of \_\_, at (location of \_\_\_\_\_), upon the charges made in the accusation. You may be present at the hearing, may, but need not, be represented by counsel, may present any relevant evidence, and will be given an opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Commission on or before (date)."

**X. DISCOVERY; HEARING BRIEFS; PRELIMINARY MATTERS.**

**A. Discovery.** The Executive Director and each respondent shall be entitled to pre-hearing discovery in accordance with the provisions of California Administrative Procedure Act, Government Code, Title 2, Division 3, Part 1, Chapter 5, section 11500 et seq.

**B. Resolution of Preliminary and Procedural Matters.**

1. The Executive Director and any respondent may present preliminary matters, unrelated to the merits of the accusation, to the assigned Commissioner or hearing officer designated to hear such matters pursuant to Section VIII, subsection C(2). Preliminary matters may include, but are not limited to, the following:

(a) procedural matters;

(b) disqualification of any member of the Commission from participation in the hearing on the merits;

(c) requests for dismissal of any charges in the accusation because, even if the allegations set forth in the accusation are true, those charges do not state a violation of law as alleged;

(d) discovery motions; and

(e) any other matters not related to the truth or falsity of the factual allegations in the accusation.

2. A request for resolution of preliminary matters must be delivered to the assigned Commissioner or hearing officer no later than 25 days prior to the commencement of a hearing on the merits. At the same time that the request is delivered to the assigned Commissioner or hearing officer, the requester must deliver copies of the request to the Executive Director and every other respondent named in the accusation.

3. The request for resolution of preliminary matters may contain legal arguments and a summary of the facts underlying the request. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the request shall not exceed 15 pages excluding attachments.

4. The Executive Director or each respondent may submit a written opposition to a request for resolution of preliminary matters. The opposition must be delivered to the assigned Commissioner or hearing officer no later than ten days after the date of delivery of the request. At the same time that the opposition is delivered to the assigned Commissioner or hearing officer, the party submitting the opposition must deliver copies of the opposition to the Executive Director and every other respondent named in the accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the opposition shall not exceed ten pages excluding attachments.

5. The requestor may submit a written reply to an opposition. The reply must be delivered to the assigned Commissioner or hearing officer no later than five days after the date of delivery of the opposition. At the same time that the reply is delivered to the assigned Commissioner or hearing officer, the party submitting the reply must deliver copies of the reply to the Executive Director and every other respondent named in the accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the reply shall not exceed five pages excluding attachments.

6. The assigned Commissioner or hearing officer shall issue a written decision on each request for resolution of preliminary matters no later than five days prior to the commencement of the hearing on the merits.

7. The Executive Director or any respondent may submit a written request for reconsideration, by the Commission, assigned Commissioner or hearing officer who will conduct the hearing on the merits, of any decision made on preliminary matters. A party requesting reconsideration shall deliver the request on the Commission, assigned Commissioner or hearing officer, and the Executive Director and any other respondent, no less than three days prior to the hearing on the merits.

8. Before or during the hearing on the merits, the Executive Director and any respondent may file a request for resolution of a procedural matter affecting the conduct of the hearing. This request shall be directed to the Commissioner or hearing officer designated to hear preliminary matters pursuant to Section VIII, subsection C(2). The request shall follow the process outlined by paragraphs 2 through 5 of this section, except that the request may be submitted later than 25 days prior to the commencement of the hearing on the merits but may not be submitted after the conclusion of the hearing on the merits. If either party requests a written decision, the assigned Commissioner or hearing officer shall issue a written decision no later than 20 days after the date of the request.

### **C. Hearing Briefs.**

The Executive Director shall, and any respondent may, submit a hearing brief. The brief shall outline significant legal arguments and list evidence and witnesses to be presented at the hearing. The brief is not required to list anticipated rebuttal evidence or rebuttal witnesses. Unless the Commission or outside hearing officer agrees to accept briefs by email, six copies of the brief shall be delivered to the Commission, assigned Commissioner, or outside hearing officer no later than 20 days prior to the date the hearing on the merits commences. The Executive Director shall deliver a copy of the Executive Director's brief to each respondent named in the accusation. Each respondent who chooses to submit a brief shall deliver copies of the respondent's brief to the Executive Director and to every other respondent named in the accusation.

### **D. Issuance of Hearing Subpoenas.**

The Executive Director and any respondent named in the accusation may request the issuance of subpoenas for the attendance of witnesses and for the production of documents at the hearing on the merits. Requests for the issuance of subpoenas should be delivered no later than 20 days prior to the commencement of the hearing on the merits. The request shall be accompanied by a declaration specifying the name and address of the witnesses and setting forth the materiality of their testimony. If the request is for a document subpoena, it shall be accompanied by a declaration which includes the following information: a specific description of the documents sought; an explanation of why the documents are necessary for the resolution of the complaint; and the name and address of the witness who has possession or control of the documents. Subpoenas may be issued upon approval of the Commission or the Commissioner or hearing officer designated by Section VIII, subsection C(2).

**XI. DISCOVERY OF EXCULPATORY INFORMATION AND  
DISMISSAL OF COMPLAINT PRIOR TO HEARING ON  
THE MERITS**

**A. Discovery of Exculpatory Information.** Following the delivery of the probable cause report, if the Executive Director is aware of or discovers any exculpatory information with respect to any charge listed in the accusation, the Executive Director shall notify the Commission and the respondent(s) of this information.

**B. Dismissal Recommendation.** After a determination of probable cause and before a hearing on the merits, the Executive Director may recommend that the Commission dismiss the complaint. The Executive Director may make such a recommendation based on the Executive Director's discovery of exculpatory information or other good cause. In such situations, if he or she has not done so already, the Executive Director is not required to issue an accusation and the Commission need not hold a hearing on the merits, unless the Commission overrides the Executive Director's dismissal recommendation.

**C. Commission Consideration of Dismissal Recommendation.** The Executive Director shall present the dismissal recommendation and the reasons for the recommendation to the Commission in a public memorandum. Thereafter, any two or more members of the Commission may cause the complaint to be calendared for consideration by the full Commission in open session at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the Executive Director's recommendation. A Commissioner's request that a complaint be calendared must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements. If two or more members of the Commission do not cause the complaint to be calendared, or if in open session a majority of the Commission does not vote to override the dismissal recommendation, the Commission shall take no further action on the complaint except: 1) inform the complainant and each respondent of the Commission's decision; 2) at the Commission's

discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for it appropriate action.

**D. Dismissal or Removal of Specific Charges.** After a determination of probable cause and before a hearing on the merits, the Executive Director may decide not to proceed with a specific charge listed in the accusation. If the Executive Director makes such a determination, the Executive Director shall immediately notify in writing the respondent(s) and the Commission or hearing officer. If the Executive Director provides such notice, the Commission shall not find a violation based on the specific charge or violation after a hearing on the merits.

## **XII. HEARING ON THE MERITS**

### **A. General Rules and Procedures.**

#### **1. Public Hearing**

The hearing on the merits shall be open to the public, provided that either the Executive Director or the respondent(s) may request that the Commission, assigned Commissioner or hearing officer exclude any witnesses.

#### **2. Standard of Proof**

The Commission may determine that a respondent has committed a violation of law only if a person of ordinary caution and prudence would conclude, based on a preponderance of the evidence, that the respondent has committed the violation.

#### **3. Rules of Evidence**

All evidence admissible in an administrative proceeding governed by the California Administrative Procedure Act shall be admissible in a hearing on the merits. The Executive Director and each respondent shall have the right to call and examine witnesses under oath or affirmation, to introduce exhibits, to cross-examine and impeach witnesses, and to rebut any evidence presented.

#### **4. Exhibits**

Where both parties stipulate to the admissibility of an exhibit, the parties shall so advise the Commission in advance of the hearing. For all other exhibits, each party may move to admit a particular exhibit at the hearing, and the other party shall have an opportunity to object prior to the ruling on the admission.

#### **5. Witnesses**



Witnesses shall be examined by the parties as follows: direct examination, cross-examination, re-direct. After the parties have concluded their examination of a witness, Commissioners shall have an opportunity to pose questions to the witness.

**6. Oral Argument**

At the hearing, the Executive Director and each respondent shall be allowed oral argument. The Commission, assigned Commissioner, or hearing officer shall determine the appropriate length for the arguments.

**B. Finding of Violation.**

If the Commission as a whole conducts the hearing on the merits, the Commission shall determine, no later than 45 days after the date the hearing is concluded, whether the respondent has committed a violation of law. If the Commission assigns one of its members or an outside hearing officer to conduct the hearing on the merits, the assigned member or hearing officer shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing is concluded. Thereafter, the Commission shall determine, no later than 45 days after the date the report and recommendation is delivered, whether the respondent has committed a violation of law.

The votes of at least three Commissioners are required to find a violation of law. The finding of a violation shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

**C. Administrative Orders and Penalties.**

1. The votes of at least three Commissioners are required to impose orders and penalties for a violation. The Commission may issue orders and penalties requiring the respondent(s) to:

- (a) cease and desist the violation;
- (b) file any reports, statements or other documents or information required by law; and/or
- (c) pay a monetary penalty to the general fund of the City in an amount permitted under the law that the Commission finds the respondent has violated, or, if the law does not specify the amount of the monetary penalty, in an amount up to five thousand dollars (\$5,000) for each violation, or three times the amount which the respondent failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.



2. When deciding on an order and penalties, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:

- (a) the severity of the violation;
- (b) the presence or absence of any intention to conceal, deceive, or mislead;
- (c) whether the violation was deliberate, negligent or inadvertent;
- (d) whether the violation was an isolated incident or part of a pattern;
- (e) whether the respondent has a prior record of violations of law; and
- (f) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.

3. Unless otherwise ordered by the Commission, any penalties imposed by the Commission must be paid in full by the respondent within 90 days of the Commission's decision.

#### **D. Finding of No Violation.**

If the Commission determines that there is insufficient evidence to establish that the respondent has committed a violation, or if the Commission determines that there is sufficient evidence to establish that the respondent has not committed a violation, the Commission shall publicly announce this fact. Thereafter, the Commission shall take no further action on the complaint. The Executive Director shall inform each respondent and complainant of the Commission's determination.

### **XIII. MISCELLANEOUS PROVISIONS**

#### **A. Ex Parte Communications.**

Once a complaint is filed, no Commissioner or staff member shall engage in oral or written communications outside of a Commission meeting, interview or settlement conference regarding the merits of an enforcement action with the respondent or complainant or any person communicating on behalf of the respondent or complainant unless the communication is necessary for the conduct of the investigation or enforcement action.

#### **B. Access to Complaints and Related Documents and Deliberations.**

1. Except as described in subsection 3 for complaints alleging violations of the San Francisco Sunshine Ordinance, ~~n~~No complaint, response thereto, investigative file or information contained therein, or Commissioner and staff deliberations about complaints shall be disclosed except as necessary to the conduct of an investigation, prior to a probable cause determination.

2. After a determination of probable cause, the probable report, the response, and the rebuttal shall be confidential, unless the respondent requested that the probable cause hearing be public. All investigative documents, including notes and memoranda, created prior to the probable cause determination, such as the complaint, shall remain confidential, except that the Executive Director may provide a copy of the complaint to the respondent(s) if the Executive Director determines that disclosure is necessary to the conduct of the investigation. All investigative documents, including notes and memoranda, created by the Executive Director and his or her staff after the probable cause determination shall be confidential, except for the accusation, until any such documents are either delivered to the Commission or respondent(s), introduced as evidence or an exhibit, or distributed for public consumption, such as an agenda or press release.

~~3. For complaints alleging willful violations of the San Francisco Sunshine Ordinance (S.F. Administrative Code Ch. 67), no complaint, investigative file or information contained therein, or Commissioner or staff deliberations shall be disclosed except as necessary to the conduct of an investigation or as required by the California Public Records Act (Government Code section 6250, et seq.) or the San Francisco Sunshine Ordinance. Deliberations by the Commission regarding such a complaint shall be conducted at a public meeting. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff shall not be disclosed until after the dismissal of a complaint or the Commission has issued its final decision following the hearing on the merits.~~

43. In addition to the prohibition on ex parte communications stated in Section XIII, subsection A, except at a public meeting of the Commission, Commissioners are prohibited, prior to a final determination on the merits of a complaint, from engaging in oral or written communications regarding the merits of a complaint or enforcement action with any person or entity unless the communication is necessary for the conduct of the investigation or enforcement action. After a final determination on the merits of a complaint, Commissioners may discuss matters in the public record.

#### C. Oaths and Affirmations.

The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.

#### D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission of the designation no later than the next business day.

#### E. Powers and Duties of Hearing Officers.

1. Unless otherwise provided, whenever the Commission assigns an individual Commissioner or hearing officer to hear any matter under these Regulations, the assigned Commissioner or hearing officer shall have the same authority, and be subject to the same restrictions, as the Commission.

2. When an individual Commissioner or a hearing officer is assigned to hear and decide preliminary matters in advance of a hearing on the merits, he or she shall make an actual determination. This determination may be reviewed by the Commission upon request by the Executive Director or a respondent, pursuant to the procedures specified in Section X, subsection B(7).

3. When an individual Commissioner or a hearing officer is assigned to conduct a probable cause hearing or hearing on the merits, he or she shall submit a report and recommendation for decision by the Commission. The report and recommendation shall contain proposed findings of fact and conclusions of law. Copies of the report and recommendation shall be delivered to the Commission, Executive Director, and each respondent no later than 30 days after the date the hearing is concluded. Thereafter, the Executive Director shall calendar the matter for consideration at the next Commission meeting not less than 15 days after the date the report and recommendation is delivered to the Commission.

4. When the Commission sits as the hearing panel to hear a case, with an outside hearing officer presiding, the hearing officer shall rule on procedural matters and on the admission and exclusion of evidence only, and shall have no role in the decision on the merits.

#### **F. Statute of Limitations.**

1. Unless otherwise stated in local or State law, for statute of limitations purposes, an action or proceeding for administrative penalties is brought or commenced by the Executive Director on the date the Executive Director delivers the probable cause report.

2. If there is no statute of limitations for violations of the law allegedly violated, the probable cause report must be delivered within four years of the date of events which form the basis of the complaint, or the date that the events constituting the basis of the complaint were discovered by the Ethics Commission, whichever is later.

#### **G. Extensions of Time and Continuances.**

Whenever the Executive Director, a respondent, or a witness is required to complete an act or produce materials pursuant to these Regulations, that party may request an extension of time. Requests for extensions of time may be made to the Commission Chair or the Commission Chair's designee. The requester must deliver the request to the Commission Chair or designee and provide a copy of the request to all other parties no later than ten business days before the deadline to complete an act or produce materials.

The Commission Chair or designee shall have the discretion to consider untimely requests. The Commission Chair or designee shall approve or deny the request within five business days of the submission of the request. The Commission Chair or designee may grant the request only upon a showing of good cause.

The Executive Director or any respondent may request the continuance of a hearing date. The requester must deliver the request to the Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall have the discretion to consider untimely requests.

The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall approve or deny the request within five working days of the submission of the request. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing may grant the request only upon a showing of good cause.

## **H. Referrals to Other Enforcement Agencies.**

At any time after the filing of a complaint, the Commission or Executive Director may refer the matter to another government agency or official if the Commission or Executive Director determines that the agency or official may more appropriately resolve the allegations in the complaint or enforce the applicable provisions of law. A copy of all information gathered by the Commission staff shall be sent to the agency or official together with the referral.

A determination by the Executive Director or the Commission that no further action should be taken on a matter shall not prevent any other government agency from initiating its own enforcement action, including disciplinary action, based on the same allegations and facts.

## **I. Recordings and Transcripts.**

Every probable cause hearing and hearing on the merits shall be tape-recorded. Where the Commission assigns a Commissioner to conduct a probable cause hearing, and where the Commission assigns a Commissioner or hearing officer to conduct a hearing on the merits, the hearing shall also be recorded stenographically. The Commission shall retain the tapes until the opportunity for legal challenge has been exhausted. Copies of a tape shall be available to the respondent upon request.

## **J. Place of Delivery.**

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these regulations require delivery to a respondent or his or her committee, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under section II, subsection F, to:

- a. If the respondent is a City employee, to the address listed with the (Controller/ Payroll) as the employee's current address.
- b. If the respondent is a former City employee, to the address listed with the City's retirement system.
- c. If the respondent is a current or former candidate or committee registered with the Ethics Commission, to the address provided to the Ethics Commission by that candidate or committee.
- d. If subsections (a) through (c) are not applicable, to an address reasonably calculated to give notice to and reach the respondent.

It is the responsibility of City employees, or candidates or committees who file reports with the Ethics Commission, to maintain accurate addresses with relevant City Departments. The Executive Director therefore may rely on those addresses in carrying out the objectives of the Commission.

3. Delivery is effective upon the date of delivery, not the date of receipt.

#### **K. Page Limitations and Format Requirements.**

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

#### **L. Public Summary of Dismissed Complaints.**

Notwithstanding any other provision of these regulations, the Executive Director may provide a public summary of dismissed complaints. Such summary may include, but need not be limited to, a generic description of each dismissed complaint and a summary of the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

#### **M. Conclusion of Hearing on the Merits.**

For the purposes of these Regulations, a hearing on the merits concludes on the last date on which the Commission hears argument or testimony in the proceeding.

### **XIV. STIPULATED ORDERS**

A. At any time after the Commission takes jurisdiction over a complaint, the Executive Director may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulation, decision and order. Any proposed stipulation, decision and order shall explicitly state that:

- (1) the proposed stipulation, decision and order is subject to approval by the Commission;
- (2) the respondent knowingly and voluntarily waives any and all procedural rights under the law and these Regulations;
- (3) the respondent understands and acknowledges that the stipulation is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
- (4) the respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and
- (5) in the event the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.

B. The stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority pursuant to Charter section C3.699-13.

C. Once the Executive Director enters into a stipulated agreement with a respondent, the Executive Director shall inform the Commission of this stipulation. Thereafter, any two or more members of the Commission may cause the stipulation to be calendared for consideration by the full Commission in a closed session at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the stipulated agreement. If there is a vacancy on the Commission or if a member must recuse himself or herself from consideration of the stipulated order, one member of the Commission may cause the stipulation to be calendared. Commissioners' requests that a stipulated agreement be calendared for consideration by the full Commission must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

D. Stipulated orders must be approved by the Commission and, upon approval, must be announced publicly. The stipulated order shall have the full force of an order of the Commission.

#### **XV. SEVERABILITY**

If any provision of these Regulations, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

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## **CHAPTER 67:**

# **THE SAN FRANCISCO SUNSHINE ORDINANCE OF 1999**

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### **Article**

- I. IN GENERAL
- II. PUBLIC ACCESS TO MEETINGS
- III. PUBLIC INFORMATION AND PUBLIC RECORDS
- IV. POLICY IMPLEMENTATION

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## **ARTICLE I: IN GENERAL**

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Sec. 67.1. Findings and Purpose.

Sec. 67.2. Citation.

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### **SEC. 67.1. FINDINGS AND PURPOSE.**

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.

(e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government.

(f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.

(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.2. CITATION.**

This Chapter may be cited as the San Francisco Sunshine Ordinance.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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# **ARTICLE II: PUBLIC ACCESS TO MEETINGS**

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- Sec. 67.3. Definitions.
- Sec. 67.4. Passive Meetings.
- Sec. 67.5. Meetings To Be Open and Public; Application of Brown Act.
- Sec. 67.6. Conduct of Business; Time and Place For Meetings.
- Sec. 67.7. Agenda Requirements; Regular Meetings.
- Sec. 67.7-1. Public Notice Requirements.
- Sec. 67.8. Agenda Disclosures: Closed Sessions.
- Sec. 67.8-1. Additional Requirements for Closed Sessions.
- Sec. 67.9. Agendas and Related Materials: Public Records.
- Sec. 67.10. Closed Sessions: Permitted Topics.
- Sec. 67.11. Statement of Reasons For Closed Sessions.
- Sec. 67.12. Disclosure of Closed Session Discussions and Actions.
- Sec. 67.13. Barriers to Attendance Prohibited.
- Sec. 67.14. Video and Audio Recording, Filming and Still Photography.

Sec. 67.15. Public Testimony.

Sec. 67.16. Minutes.

Sec. 67.17. Public Comment By Members of Policy Bodies.

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## SEC. 67.3. DEFINITIONS.

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

(a) "City" shall mean the City and County of San Francisco.

(b) "Meeting" shall mean any of the following:

(1) A congregation of a majority of the members of a policy body at the same time and place;

(2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or

(3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.

(4) "Meeting" shall not include any of the following:

(A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;

(B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or

(C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.

(C-1)\* The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body, provided that the members of the policy body who are not members of the standing committee attend only as observers.

(D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients.

(c) "Passive meeting body" shall mean:

- (1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;
- (2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues;
- (3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.
- (4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;

(5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating City policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;

(d) "Policy Body" shall mean:

- (1) The Board of Supervisors;
- (2) Any other board or commission enumerated in the Charter;
- (3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;
- (4) Any advisory board, commission, committee or body, created by the initiative of a policy body;
- (5) Any standing committee of a policy body irrespective of its composition.
- (6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by Charter or by ordinance or resolution of the Board of Supervisors.
- (7) Any advisory board, commission, committee, or council created by a federal, State, or local grant whose members are appointed by City officials, employees or agents.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G, 11/2/99)

#### ***Editor's note***

*\*The drafters of Proposition G (November 2, 1999) inadvertently omitted section 67.3(b)(4)(C-1), formerly section 67.3(b)(4)(D), from the text of the ordinance submitted to the voters.*

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### **SEC. 67.4. PASSIVE MEETINGS.**

(a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.

(1) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.

(2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.

(3) Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.

(4) Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.

(5) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City and County of San Francisco.

(6) Gatherings defined in subdivision (5) may hold closed sessions under circumstances allowed by this Article.

(b) To the extent not inconsistent with State or federal law, a policy body shall include in any contract with an entity that owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related activities on the property, or performance under the contract or grant, be conducted as provided in Subdivision (a) of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

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## **SEC. 67.5. MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.**

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this Article. In case of inconsistent requirements under the Brown Act and this Article, the requirement which would result in greater or more expedited public access shall apply.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.6. CONDUCT OF BUSINESS; TIME AND PLACE FOR MEETINGS.**

(a) Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.

(b) Unless otherwise required by state or federal law or necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the City and County of San Francisco or to meet with residents residing on property owned by the City, or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents, all meetings of its policy bodies shall be held within the City and County of San Francisco.

(c) If a regular meeting would otherwise fall on a holiday, it shall instead be held on the next business day, unless

otherwise rescheduled in advance.

(d) If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.

(e) Meetings of passive meeting bodies as specified in Section 67.6(d)(4) of this article shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least 72 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 67.7 of this article in the place used by the policy body which it advises, is required.

(f) Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.

(g) If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in Section 67.7(c), and mailed notice if sufficient time permits.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## SEC. 67.7. AGENDA REQUIREMENTS; REGULAR MEETINGS.

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.



(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e) Notwithstanding Subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(f) Each board and commission enumerated in the Charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.

(g) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER  
THE SUNSHINE ORDINANCE  
(Chapter 67 of the  
San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION  
ON YOUR RIGHTS UNDER THE SUNSHINE  
ORDINANCE OR TO REPORT A VIOLATION  
OF THE ORDINANCE, CONTACT THE  
SUNSHINE ORDINANCE TASK FORCE.

(h) Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person's name for the Sunshine Ordinance Task Force. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 185-96, App. 5/8/96; Proposition G, 11/2/99)

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## SEC. 67.7-1. PUBLIC NOTICE REQUIREMENTS.

(a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

(b) The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.

(c) If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.

(Added by Ord. 185-96, App. 5/8/96; amended by Proposition G, 11/2/99)

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## SEC. 67.8. AGENDA DISCLOSURES: CLOSED SESSIONS.

(a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:

- (1) With respect to a closed session held pursuant to Government Code Section 54956.7:

### LICENSE/PERMIT DETERMINATION:

\_\_\_\_\_ applicant(s)

The space shall be used to specify the number of persons whose applications are to be reviewed.

- (2) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:

### CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property:

Person(s) negotiating:

Under negotiation:

Price: \_\_\_\_\_ Terms of payment: \_\_\_\_\_ Both: \_\_\_\_\_

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

- (3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

### CONFERENCE WITH LEGAL COUNSEL

Existing litigation:

\_\_\_\_\_ Unspecified to protect service of process

\_\_\_\_\_ Unspecified to protect settlement posture

or:

#### CONFERENCE WITH LEGAL COUNSEL

Anticipated litigation: \_\_\_\_\_ As defendant \_\_\_\_\_ As plaintiff

The space under "Existing litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or both as appropriate.

(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

#### THREAT TO PUBLIC SERVICES OR FACILITIES

Name, title and agency of law enforcement officer(s) to be conferred with:

or:

#### PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

#### PUBLIC EMPLOYEE PERFORMANCE

##### EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

or:

#### PUBLIC EMPLOYEE DISMISSAL

Number of employees affected:

or:

(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

#### CONFERENCE WITH NEGOTIATOR

##### COLLECTIVE BARGAINING

Name and title of City's negotiator:

Organization(s) representing:

\_\_\_\_\_ Police officers, firefighters and airport police

\_\_\_\_\_ Transit Workers

\_\_\_\_\_ Nurses

\_\_\_\_\_ Miscellaneous Employees

Anticipated issue(s) under negotiation:

\_\_\_\_\_ Wages  
\_\_\_\_\_ Hours  
\_\_\_\_\_ Benefits  
\_\_\_\_\_ Working Conditions  
\_\_\_\_\_ Other (specify if known)  
\_\_\_\_\_ All

Where renegotiating a memorandum of understanding or negotiating a successor memorandum of understanding, the name of the memorandum of understanding:

In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.8-1. ADDITIONAL REQUIREMENTS FOR CLOSED SESSIONS.**

(a) All closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained for at least TEN years, or permanently where technologically and economically feasible. Closed session recordings shall be made available whenever all rationales for closing the session are no longer applicable. Recordings of closed sessions of a policy body covered by this Ordinance, wherein the justification for the closed session is due to "anticipated litigation" shall be released to the public in accordance with any of the following provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the statute of limitations for the anticipated litigation if no litigation is filed; as soon as the controversy leading to anticipated litigation is settled or concluded.

(b) Each agenda item for a policy body covered by this ordinance that involve existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item for a group covered by this ordinance that involves anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time requested and to any member of the public whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.**

(a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

(b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.

(c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but

prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.

(d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.10. CLOSED SESSIONS: PERMITTED TOPICS.**

A policy body may, but is not required to, hold closed sessions:

(a) With the Attorney General, District Attorney, Sheriff, or Chief of Police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.

(b) To consider the appointment, employment, evaluation of performance, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter. The term "employee" as used in this section shall not include any elected official, member of a policy body or applicant for such a position, or person providing services to the City as an independent contractor or the employee thereof, including but not limited to independent attorneys or law firms providing legal services to the City for a fee rather than a salary.

(c) Notwithstanding section (b), an Executive Compensation Committee established pursuant to a Memorandum of Understanding with the Municipal Executives Association may meet in closed session when evaluating the performance of an individual officer or employee subject to that Memorandum of Understanding or when establishing performance goals for such an officer or employee where the setting of such goals requires discussion of that individual's performance.

(d) Based on advice of its legal counsel, and on a motion and vote in open session to assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or,

(2) A point has been reached where, in the opinion of the policy body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.

(3) A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.

(e) With the City's designated representatives regarding matters within the scope of collective bargaining or meeting and



conferring with public employee organizations when a policy body has authority over such matters.

(1) Such closed sessions shall be for the purpose of reviewing the City's position and instructing its designated representatives and may take place solely prior to and during active consultations and discussions between the City's designated representatives and the representatives of employee organizations or the unrepresented employees. A policy body shall not discuss compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations.

(2) In addition to the closed sessions authorized by subsection 67.10(e)(1), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 37-98, App. 1/23/98; Proposition G, 11/2/99)

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## **SEC. 67.11. STATEMENT OF REASONS FOR CLOSED SESSIONS.**

Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the policy body may consider only those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section 67.8 of this Article. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section 67.8 of this Article, as part of the notice provided for the meeting.

In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section 67.8 of this Article. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.12. DISCLOSURE OF CLOSED SESSION DISCUSSIONS AND ACTIONS.**

(a) After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, the Charter, or non-waivable privilege. The body shall, by motion and vote in open session, elect either to disclose no information or to disclose the information that a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.

(b) A policy body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Real Property Negotiations: Approval given to a policy body's negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in Subdivision (b) of this Section need not be disclosed until the

condition has been satisfied or the agreement has been reached with respect to all the properties, or both.

(2) **Litigation:** Direction or approval given to the body's legal counsel to prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation pursuant to Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City's intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City's complaint, petition or other litigation initiative.

(3) **Settlement:** A policy body shall neither solicit nor agree to any term in a settlement which would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 10 calendar days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program or otherwise acting other than to pay an amount of money less than \$50,000. The agenda for any meeting in which a settlement subject to this Section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the City's interest in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by Subdivision (b) of this Section need not be disclosed until the other case is settled or otherwise finally concluded.

(4) **Employee Actions:** Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any termination of employment at the will of the employer rather than of the employee, however characterized. The proposed terms of any separation agreement shall be immediately disclosed as soon as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.

(5) **Collective Bargaining:** Any collectively bargained agreement shall be made publicly available at least 15 calendar days before the meeting of the policy body to which the agreement is to be reported.

(c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.

(d) A written summary of the information required to be immediately reported pursuant to this Section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.13. BARRIERS TO ATTENDANCE PROHIBITED.**

(a) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the Board of Supervisors, a board or commission enumerated in the charter, or any committee thereof anticipates that the number of



persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.

(b) Each board and commission enumerated in the charter shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the board or commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline shall be 4 p.m. of the last business day of the preceding week.

(c) Each board and commission enumerated in the charter shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.

(d) Each board and commission enumerated in the charter shall include on the agenda for each regular and special meeting the following statement: "In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals."

(e) The Board of Supervisors shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to enable San Francisco residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the Clerk of the Board of Supervisors at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The Clerk of the Board of Supervisors shall first solicit volunteers from the ranks of City employees and/or from the community to serve as translators. If volunteers are not available the Clerk of the Board of Supervisors may next solicit translators from non-profit agencies, which may be compensated. If these options do not provide the necessary translation services, the Clerk may employ professional translators. The unavailability of a translator shall not affect the ability of the Board of Supervisors or its committees to deliberate or vote upon any matter presented to them. In any calendar year in which the costs to the City for providing translator services under this subsection exceeds \$20,000, the Board of Supervisors shall, as soon as possible thereafter, review the provisions of this subsection.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 482-96, App. 12/20/96; Proposition G, 11/2/99)

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## **SEC. 67.14. VIDEO AND AUDIO RECORDING, FILMING AND STILL PHOTOGRAPHY.**

(a) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

(b) Each board and commission enumerated in the Charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City.

(c) Every City policy body, agency or department shall audio or video every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.),

and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site ([www.sfgov.org](http://www.sfgov.org)) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99; Ord. 80-08, File No. 071596)

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## **SEC. 67.15. PUBLIC TESTIMONY.**

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body must not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to Subdivision (c) of this Section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.16. MINUTES.**

The clerk or secretary of each board and commission enumerated in the Charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person

speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this Section shall be made available in Braille or increased type size.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## SEC. 67.17. PUBLIC COMMENT BY MEMBERS OF POLICY BODIES.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of State or Federal law or of this ordinance. The release of specific factual information made confidential by State or Federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor seeking an accusation of misconduct, or both.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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# ARTICLE III: PUBLIC INFORMATION AND PUBLIC RECORDS

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- Sec. 67.20. Definitions.
- Sec. 67.21. Process for Gaining Access to Public Records; Administrative Appeals.
- Sec. 67.21-1. Policy Regarding Use and Purchase of Computer Systems.
- Sec. 67.22. Release of Oral Public Information.
- Sec. 67.23. Public Review File—Policy Body Communications.
- Sec. 67.24. Public Information that Must Be Disclosed.
- Sec. 67.25. Immediacy of Response.
- Sec. 67.26. Withholding Kept to a Minimum.
- Sec. 67.27. Justification of Withholding.
- Sec. 67.28. Fees for Duplication.
- Sec. 67.29. Index to Records.
- Sec. 67.29-1. Records Survive Transition of Officials.

- Sec. 67.29-2. Internet Access/World Wide Web Minimum Standards.
- Sec. 67.29-3.
- Sec. 67.29-4. Lobbyist On Behalf of the City.
- Sec. 67.29-5. Calendars of Certain Officials.
- Sec. 67.29-6. Sources of Outside Funding.
- Sec. 67.29-7. Correspondence and Records Shall Be Maintained.

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## **SEC. 67.20. DEFINITIONS.**

Whenever in this article the following words or phrases are used, they shall mean:

(a) "Department" shall mean a department of the City and County of San Francisco.

(b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).

(c) "Supervisor of Records" shall mean the City Attorney.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 375, App. 9/30/96; Proposition G, 11/2/99)

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## **SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record,

when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the *superior court* shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.



(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

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## **SEC. 67.21-1. POLICY REGARDING USE AND PURCHASE OF COMPUTER SYSTEMS.**

(a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.

(b) Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

(1) Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.

(2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.

(3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

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## **SEC. 67.22. RELEASE OF ORAL PUBLIC INFORMATION.**

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this

information.

(b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

(c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

(e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.23. PUBLIC REVIEW FILE - POLICY BODY COMMUNICATIONS.**

(a) The clerk of the Board of Supervisors and the clerk of each board and commission enumerated in the charter shall maintain a file, accessible to any person during normal office hours, containing a copy of any letter, memorandum or other communication which the clerk has distributed to or received from a quorum of the policy body concerning a matter calendared by the body within the previous 30 days or likely to be calendared within the next 30 days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the California Public Records Act (Government Code Section 6250 et seq.) and not deemed disclosable under Section 67.24 of this article.

(b) Communications, as described in subsection (a), sent or received in the last three business days shall be maintained in chronological order in the office of the department head or at a place nearby, clearly designated to the public. After documents have been on file for two full days, they may be removed, and, in the discretion of the board or commission, placed in a monthly chronological file.

(c) Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the file so long as the letter or memorandum of transmittal is included.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.**



Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

**(a) Drafts and Memoranda.**

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, Subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under Subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

**(b) Litigation Material.**

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco Governmental Ethics Code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

**(c) Personnel Information.** None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

(i) Sex, age and ethnic group;

(ii) Years of graduate and undergraduate study, degree(s) and major or discipline;

(iii) Years of employment in the private and/or public sector;

(iv) Whether currently employed in the same position for another public agency.

(v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

- (2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.
- (3) The job description of every employment classification.
- (4) The exact gross salary and City-paid benefits available to every employee.
- (5) Any memorandum of understanding between the City or department and a recognized employee organization.
- (6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.
- (7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

**(d) Law Enforcement Information.**

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable State law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

- (1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
- (2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- (3) The identity of a confidential source;
- (4) Secret investigative techniques or procedures;
- (5) Information whose disclosure would endanger law enforcement personnel; or
- (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This Subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

**(e) Contracts, Bids and Proposals.**

- (1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by

this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(2) Notwithstanding the provisions of this Subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

- (i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;
- (ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or
- (iii) any franchise agreements,

all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or City representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

(f) **Budgets and Other Financial Information.** Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption

provided by California Public Records Act that is not forbidden by this ordinance.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 240-98, App. 7/17/98; Proposition G, 11/2/99)

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## **SEC. 67.25. IMMEDIACY OF RESPONSE.**

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Article.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.**

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.27. JUSTIFICATION OF WITHHOLDING.**

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.28. FEES FOR DUPLICATION.**

(a) No fee shall be charged for making public records available for review.

(b) For documents routinely produced in multiple copies for distribution, e.g. meeting agendas and related materials, unless a special fee has been established pursuant to Subdivision (d) of this Section, a fee not to exceed one cent per page may be charged, plus any postage costs.

(c) For documents assembled and copied to the order of the requester, unless a special fee has been established pursuant to Subdivision (d) of this Section, a fee not to exceed 10 cents per page may be charged, plus any postage.

(d) A department may establish and charge a higher fee than the one cent presumptive fee in Subdivision (b) and the 10 cent presumptive fee in Subdivision (c) if it prepares and posts an itemized cost analysis establishing that its cost per page impression exceeds 10 cents or one cent, as the case may be. The cost per page impression shall include the following costs: one sheet of paper; one duplication cycle of the copying machine in terms of toner and other specifically identified operation or maintenance factors, excluding electrical power. Any such cost analysis shall identify the manufacturer, model, vendor and maintenance contractor, if any, of the copying machine or machines referred to.

(e) Video copies of video recorded meetings shall be provided to the public upon request for \$10.00 or less per meeting.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.29. INDEX TO RECORDS.**

The City and County shall prepare a public records index that identifies the types of information and documents maintained by City and County departments, agencies, boards, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Administrator shall be responsible for the preparation of this records index. The City Administrator shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Administrator to identify the



types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City and County. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City Administrator shall be recorded by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's World Wide Website and made available at public libraries within the City and County of San Francisco.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

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## **SEC. 67.29-1. RECORDS SURVIVE TRANSITION OF OFFICIALS.**

All documents prepared, received, or maintained by the Office of the Mayor, by any elected city and county official, and by the head of any City or County Department are the property of the City and County of San Francisco. The originals of these documents shall be maintained consistent with the records retention policies of the City and County of San Francisco.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.29-2. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.**

Each department of the City and County of San Francisco shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities. At a minimum, within six months after enactment of this provision, each department shall post on its World Wide Web site all meeting notices required under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for the last three years. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48 hours after they have been approved. Each department shall make reasonable efforts to ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at least a weekly basis. The City and County shall also make available on its World Wide Web site, or on a comparable, readily accessible location on the Internet, a current copy of the City Charter and all City Codes.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.29-3.**

Any future agreements between the city and an advertising space provider shall be public records and shall include as a basis for the termination of the contract any action by, or permitted by, the space provider to remove or deface or otherwise interfere with an advertisement without first notifying the advertiser and the city and obtaining the advertiser's consent. In the event advertisements are defaced or vandalized, the space provider shall provide written notice to the city and the advertiser and shall allow the advertiser the option of replacing the defaced or vandalized material. Any request by any city official or by any space provider to remove or alter any advertising must be in writing and shall be a public record.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.29-4. LOBBYIST ON BEHALF OF THE CITY.**

(a) Any lobbyist who contracts for economic consideration with the City and County of San Francisco to represent the City and County in matters before any local, regional, State, or federal administrative or legislative body shall file a public records report of their activities on a quarterly basis with the San Francisco Ethics Commission. This report shall be maintained by the Ethics Commission and not be exempt from disclosure. Each quarterly report shall identify all financial expenditures by the lobbyist, the individual or entity to whom each expenditure was made, the date the expenditure was made, and specifically identify the local, State, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be a violation of this Ordinance.

(b) No person shall be deemed a lobbyist under section (a), unless that person receives or becomes entitled to receive at least \$300 total compensation in any month for influencing legislative or administrative action on behalf of the City and County of San Francisco or has at least 25 separate contacts with local, State, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. No business or organization shall be deemed as a lobbyist under Section (a) unless it compensates its employees or members for their lobbying activities on behalf of the City and County of San Francisco, and the compensated employees or members have at least 25 separate contacts with local, State, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. "Total compensation" shall be calculated by combining all compensation received from the City and County of San Francisco during the month for lobbying activities on matters at the local, State, regional or national level. "Total number of contacts" shall be calculated by combining all contacts made during the two-month period on behalf of the City and County of San Francisco for all lobbying activities on matters at the local, state, regional or national level.

(c) Funds of the City and County of San Francisco, including organizational dues, shall not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.29-5. CALENDARS OF CERTAIN OFFICIALS.**

The Mayor, The City Attorney, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no City business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the City. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.29-6. SOURCES OF OUTSIDE FUNDING.**

No official or employee or agent of the City shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the department to which the funds are directed. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the contributor has involving



the City.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.**

(a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

(b) The Department of Elections shall keep and preserve all records and invoices relating to the design and printing of ballots and other election materials and shall keep and preserve records documenting who had custody of ballots from the time the ballots are cast until ballots are received and certified by the Department of Elections.

(c) In any contract, agreement or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance. Failure of an entity to comply with these provisions shall be grounds for terminating the contract or for imposing a financial penalty equal to one-half of the fees derived under the agreement or permit during the period of time when the failure was in effect. Failure of any Department Head under this provision shall be a violation of this ordinance. This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in the City and shall apply to any agreement allowing an entity to collect any fee from any persons in any pretrial diversion program.

(Added by Proposition G, 11/2/99)

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## **ARTICLE IV: POLICY IMPLEMENTATION**

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- Sec. 67.30. The Sunshine Ordinance Task Force.
- Sec. 67.31. Responsibility for Administration.
- Sec. 67.32. Provision of Services to Other Agencies; Sunshine Required.
- Sec. 67.33. Department Head Declaration.
- Sec. 67.34. Willful Failure Shall be Official Misconduct.
- Sec. 67.35. Enforcement Provisions.
- Sec. 67.36. Sunshine Ordinance Supersedes Other Local Laws.
- Sec. 67.37. Severability.

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## **SEC. 67.30. THE SUNSHINE ORDINANCE TASK FORCE.**

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to it an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.

(c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

(d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.

(e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96, App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99)

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## **SEC. 67.31. RESPONSIBILITY FOR ADMINISTRATION.**

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this Chapter for departments under the control of board and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. The Clerk of the

Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

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## **SEC. 67.32. PROVISION OF SERVICES TO OTHER AGENCIES; SUNSHINE REQUIRED.**

It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships. Officers, agents and other representatives of the City shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions, including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island Development Authority, the San Francisco Redevelopment Authority and the University of California. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, or and representative, shall be accessible as public records. To the extent not expressly prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. The City shall give no subsidy in money, tax abatements, land, or services to any private entity unless that private entity agrees in writing to provide the City with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, for the project upon which the subsidy is based and all such projections and financial statements shall be public records that must be disclosed.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.33. DEPARTMENT HEAD DECLARATION.**

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney's Office with the assistance of the Sunshine Ordinance Task Force.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.**

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.35. ENFORCEMENT PROVISIONS.**

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

(c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a City or State official 40 days after a complaint is filed.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.36. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.**

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.37. SEVERABILITY.**

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

JAMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: August 27, 2012

To: Members, Ethics Commission

From: John St. Croix, Executive Director

By: Mabel Ng, Deputy Executive Director

A handwritten signature in black ink, appearing to be "Mabel Ng", written over a horizontal line.

Re: Proposed legislation to impose disclosure requirements on draft committees

## Background

At its August 8, 2011 meeting, the Ethics Commission considered the status of two campaign committees, one called the "Draft Ed Lee Committee," which registered as a primarily formed committee; and another called "Progress for All," which initially registered as a general purpose committee. "Progress for All" funded the "Run, Ed, Run" campaign, which focused on convincing then interim-Mayor Ed Lee to run for election as Mayor in the November 2011 election. Because news reports indicated that the committee functioned as a primarily formed committee that existed solely to support Mayor Lee's potential candidacy,<sup>1</sup> the Executive Director instructed Progress for All to refile as a primarily formed committee.

Mayor Lee was not listed on the ballot, nor had he received any contributions or made any expenditures in support of his election. In other words, he did not meet the definition of being a "candidate" under the law. See Cal. Gov't Code § 82007. And because the Commission determined that Mayor Lee was not a "candidate" at that time, there was no basis to require Progress for All to refile as a primarily formed committee.

In making its determination, however, the Commission instructed staff to propose amendments to the City's campaign finance laws that would require a committee promoting an individual as a candidate to the voters to file reports and disclose its activities with the Commission as a primarily formed committee. This memo presents staff's recommendations to create such a requirement.

Both general purpose committees and primarily formed committees are recipient committees that generally file semi-annual statements due January 31 and July 31 to disclose campaign activities of the past six months. Local committees also file pre-

<sup>1</sup> A primarily formed committee is a committee formed or existing primarily to support or oppose, (a) a single candidate, (b) a single measure, (c) a group of specific candidates being voted upon in the same city, county, or multicounty or state election, or (d) two or more measures being voted upon in the same city, county, multicounty, or state election. See Calif. Gov't Code § 82047.5.



election reports and late contribution and late independent expenditure reports, if applicable. The distinguishing feature of a primarily formed committee, however, is that it must file in the jurisdiction where the candidate or measure it is primarily formed to support or oppose normally files its campaign statements. See 2 Cal. Code Regs § 18247.5. Thus, a primarily formed committee supporting a candidate for City elective office would be required to file with the Ethics Commission; a general purpose committee that makes expenditures to support a candidate for City elective office need not be required to file with the Ethics Commission.

The proposed changes are to the Campaign Finance Reform Ordinance (CFRO), San Francisco Campaign and Governmental Conduct Code section 1.100 et seq. (C&GC Code). The Board of Supervisors (Board) may amend the CFRO if (a) the amendment furthers the purposes of the CFRO, (b) the Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members; (c) the proposed amendment is available for public review at least 30 days before the amendment is considered by the Board or any committee of the Board; and (d) the Board approves the proposed amendment by at least a two-thirds vote of all its members. C&GC Code § 1.103.

## Discussion

The proposed amendments establish a new section in the CFRO, section 1.160, which has two subsections, one setting forth definitions and the other the filing requirements.

### 1. Proposed section 1.160(a)

Section 1.160(a) contains three definitions and a provision that the Ethics Commission may adopt regulations further defining those terms.

The term “draft committee” under section 1.160(a)(1) is perhaps the most critical definition here. Under staff’s proposal, any person, group of persons, or entity that receives at least \$1,000 in contributions or makes \$1,000 in expenditures to support the election of an identifiable person who is *not* yet a candidate will be subject to reporting requirements. The language that describes “identifiable person” in the proposal generally tracks language that defines “candidate” under state law. Under the legislation, a committee that receives contributions or makes expenditures to support the election of *an identifiable person who has not yet qualified as a candidate* will have the same filing obligations as a primarily formed committee that receives contributions or makes expenditures to support a declared candidate. The “draft committee” must register as a committee and file reports disclosing contributions and expenditures during set time periods, just like other primarily formed committees that support candidates.

The term “support” is defined as any public actions or statements encouraging or urging an identifiable person to declare as a candidate for City elective office.

The term “primarily formed committee” is as defined in California Government Code section 82047.5, which is: “a committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose any of the following:

(a) A single candidate.



- (b) A single measure.
- (c) A group of specific candidates being voted upon in the same city, county, or multicounty election.
- (d) Two or more measures being voted upon in the same city, county, multicounty, or state election.<sup>2</sup>

#### **Decision Point 1**

Shall the Commission approve the proposed new language in section 1.160(a) of the CFRO, as set forth on page 1, lines 13-24 of the draft amendments?

#### **2. Proposed section 1.160(b)**

Section 1.160(b) sets forth the filing requirements for the draft committees. Under the proposal, a draft committee would be subject to the same state or local filing requirements that apply to a primarily formed committee that supports a candidate seeking the same City elective office. Generally speaking, this means that the draft committee must file its statement of organization as a primarily formed committee. Thereafter, the draft committee would file the FPPC Form 460 on a periodic basis, as required by law, to disclose contributions received and expenditures made.

#### **Decision Point 2**

Shall the Commission approve the proposed new language in section 1.160(b) of the CFRO, as set forth on page 1, line 25 – page 2, line 7 of the draft amendments?

\* \* \*

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

#### **§ 18247.5. Primarily Formed Committees.**

- (a) A “primarily formed” committee, as defined in Section 82047.5 and this regulation, is a recipient committee under Section 82013(a) that supports or opposes a single candidate or measure, or a specific group of measures or local candidates on the same ballot. (In contrast, a “general purpose” committee, defined in Section 82027.5 and Regulation 18227.5, supports multiple candidates or ballot measures.)
- (b) Filing. Under Section 84215, a primarily formed committee files in the jurisdiction where the candidate(s) or measure(s) it is primarily formed to support or oppose normally file(s) their campaign statements.
- (c) Special Requirements for Primarily Formed Committees. In addition to other applicable provisions of the Act and regulations, a primarily formed committee must automatically file preelection statements under Section 84200.5 and 84200.7 or 84200.8; must comply with the committee name and identification of donors requirements of Sections 84107, 84503 and 84504, if supporting or opposing a ballot measure; must comply with the committee name rules of Regulation 18402(c)(3) if supporting or opposing candidate(s); must file online 90-day reports under Section 85309 if supporting or opposing a state ballot measure; must file 16-day reports of contributions received under Section 82036; and is subject to mandatory audit if a state committee.

<sup>2</sup> Fair Political Practices Commission Regulation 18247.5 provides further information about primarily formed committees. The regulation is set forth at the end of this memo.

(d) Definition. For purposes of Section 82047.5, a recipient committee under Section 82013(a) is considered to be “formed or existing primarily to support or oppose” a candidate or measure if:

(1) The committee is created for the purpose of or is involved in running the principal campaign for or against the candidate(s) or measures(s) as listed in subdivision (d)(4) below; or

(2) The committee's primary purpose and activities are to support or oppose candidate(s) or measure(s) as listed in subdivision (d)(4) below; or

(3) The committee makes more than 70 percent of its total contributions and expenditures on all candidates and measures (not including administrative overhead) on those specific candidate(s) or measure(s) as listed in subdivision (d)(4) below, during the time period specified in subdivision (e)(3).

(4)(A) A single candidate. A committee formed or existing primarily to support or oppose a single candidate includes a committee that makes contributions and expenditures for a particular candidate and against that candidate's opponent(s).

(B) A single measure.

(C) A group of specific candidates being voted upon in the same city, county, or multicounty election.

(D) Two or more measures being voted upon in the same city, county, multicounty, or state election.

(e) Review.

(1) A committee that has reason to know it is close to triggering the applicable threshold for changing status because its spending is concentrated on candidate(s) or measure(s) as listed in subparagraphs (d)(4)(A), (B), (C) or (D), shall determine whether it is primarily formed quarterly at the end of March, June, September and December.

(2) Newly organized committees.

(A) A committee that files its initial statement of organization within six months of an election in connection with which the committee makes contributions and expenditures shall determine whether it is primarily formed at the end of each month prior to the election unless the committee has not made contributions and/or expenditures of \$1,000 or more to support or oppose candidates or measures during that month.

(B) A committee that files its initial statement of organization within six months of a statewide primary or general election or within 30 days after a declaration calling a special election for a state elective office or measure and makes at least \$25,000 in independent expenditures to support or oppose a state candidate or state measure(s) as listed in subparagraphs (d)(4)(A), (B), or (D), is presumed to be, and shall report as, a primarily formed committee. This presumption can be rebutted when the committee's contributions and expenditures on multiple candidates or measures in different jurisdictions or elections demonstrate that it is not primarily formed and the committee may amend its statement of organization to identify itself as a general purpose committee pursuant to Regulation 18227.5.

(3) For purposes of determining whether it is primarily formed under subdivision (d)(3), a committee shall count contributions and expenditures made to support or oppose candidates or measures during whichever of the following time periods most accurately reflects the current and upcoming activities of the committee:

(A) The immediately preceding 24 months; or

(B) The current two-year period, beginning with January 1 of an odd-numbered year and ending with December 31 of the following even-numbered year.

(f) File as Primarily Formed through the Election. A committee that is or becomes primarily formed within 90 days prior to an election shall maintain that status and file disclosure reports as a primarily formed committee up to the date of that election and continuing until the end of the post-election reporting period.

(g) Change of Status.

(1) Amend Statement of Organization. A recipient committee whose status changes from one jurisdiction to another, or between general purpose and primarily formed shall amend its statement of organization pursuant to Section 84103 to reflect the change. If, after filing reports with one jurisdiction, a committee changes jurisdiction, in addition to filing reports with a new filing officer, the committee must continue filing reports with the original filing officer through the end of the calendar year under Section 84215(g).

(2) An existing general purpose committee is not required to change its filing status to a primarily formed committee unless it meets the requirements in subdivision (d) and it makes at least \$100,000 of contributions and/or expenditures if supporting or opposing a state candidate or measure(s) listed in subparagraphs (d)(4)(A), (B), or (D), or at least \$10,000 of contributions and/or expenditures if supporting or opposing local candidate(s) or measure(s) listed in subparagraphs (d)(4)(A), (B), (C), or (D).

(3) Contributions from a general purpose committee to a primarily formed ballot measure or candidate committee shall not be included in the calculations required under subdivision (d)(3) if the sponsor of the general purpose committee is also a sponsor of the primarily formed committee.

(4) A committee that was primarily formed for the election of a candidate or measure, but after that election continues to exist to support or oppose different candidates or measures in the future, may remove the candidate or measure name from the committee name and change its status following the election, as long as the committee is not raising funds to pay debt from the election, except as provided in subdivision (f).

(h) Avoidance of Disclosure. A committee shall not knowingly file in an incorrect jurisdiction or as an incorrect type of committee, with the intention of avoiding the appropriate legal disclosure of campaign contributions and expenditures to the public.

Note: Authority cited: Section 83112, Government Code. Reference: Section 82047.5, Government Code.



[Campaign and Governmental Conduct Code – Disclosure for Draft Committees]

Ordinance amending the San Francisco Campaign and Governmental Conduct Code by adding section 1.160 to impose disclosure requirements on committees that support a person for City elective office who has not yet qualified as a candidate.

NOTE: Additions are single-underline italics Times New Roman; deletions are ~~strike-through italics Times New Roman~~; Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Campaign and Governmental Conduct Code is hereby amended by adding Section 1.160, to read as follows:

SEC. 1.160. DISCLOSURE REQUIREMENTS FOR DRAFT COMMITTEES.

(a) Definitions. Whenever in this Section the following words or phrases are used, they shall mean:

(1) "Draft committee" shall mean any person, group of persons or entity that either receives contributions of \$1,000 or more or makes expenditures of \$1,000 or more, in order to support the election of an identifiable person to City elective office who has not qualified as a candidate.

(2) "Support" shall mean any public actions or statements encouraging or urging an identifiable person to declare as a candidate for City elective office.

(3) "Primarily formed committee" shall be defined as set forth in the California Political Reform Act, California Government Code section 82047.5.

(4) The Ethics Commission may adopt regulations further defining these terms.

(b) Filing requirements.

1                   (1) Draft committees shall file any campaign finance-related filings, reports or  
2                   statements required by either state or local law for a primarily formed committee supporting a  
3                   candidate seeking the City elective office for which the draft committee is supporting an identifiable  
4                   person.

5                   (2) If the identifiable person supported by a draft committee qualifies as a candidate  
6                   for City elective office, the committee shall continue to file, as required by either state or local law, as a  
7                   primarily formed committee supporting that candidate.

8                   Section 2. Effective Date. This ordinance shall become effective 30 days from the  
9                   date of passage.

10                  Section 3. This section is uncoded. In enacting this Ordinance, the Board intends to  
11                  amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
12                  punctuation, charts, diagrams, or any other constituent part of the Campaign and  
13                  Governmental Conduct Code that are explicitly shown in this legislation as additions,  
14                  deletions, Board amendment additions, and Board amendment deletions in accordance with  
15                  the "Note" that appears under the official title of the legislation.

16                  APPROVED AS TO FORM:  
17                  DENNIS J. HERRERA, City Attorney

18                  By: \_\_\_\_\_  
19                  ANDREW SHEN  
20                  Deputy City Attorney



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

### EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of November 26, 2012

BENEDICT Y. HUR  
CHAIRPERSON

JAMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

#### 1. November 6, 2012 election.

As of November 13, 2012, the Commission disbursed a total of \$1,178,761 in public funds to 12 candidates eligible to receive public financing. Candidates may continue to submit requests for public funds through December 6, 2012.

According to Third Party Disclosure Forms filed with the Commission, third party spending to support or oppose candidates on the November 6 ballot totaled almost \$1.7 million. In 2010 when 22 candidates qualified to receive public funding, third party spending also totaled approximately \$1.7 million.

Staff continues to conduct outreach to candidates to inform them about rules relating to termination of committees, return of unexpended funds and other relevant matters. Audits will commence soon.

#### 2. Investigation and enforcement program.

As of November 14, 2012, there are 28 pending formal complaints alleging violations within the Ethics Commission's jurisdiction. Out of the nine complaints alleging Sunshine Ordinance violations, the resolution of seven is pending the approval of the Commission's Sunshine Ordinance regulations.

Category	# of Complaints
Campaign Finance	15
Conflict of Interest	2
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	9
<b>TOTAL</b>	<b>28</b>

#### 3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline was on October 25, 2012 for the Second Pre-Election statement, which covers the reporting period ending October 20, 2012. Only one filer still has not filed his required statement. Staff sent a Non-Specific Written Notice. In the interim, staff continues to receive and process campaign statements for other filing deadlines. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign



finance filing obligations. The next filing deadline is January 31, 2013 for the Second Semi-Annual Statement, which covers the reporting period ending December 31, 2012.

b. Collection of late filing fees and contribution forfeitures. In the FY12-13, as of November 14, the Commission collected a total of \$28,193 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$22,449, of which waiver requests are pending for \$210; and \$6,659 is pending at the Bureau of Delinquent Revenues (BDR).

In the last ED report, eight filers appeared on the BDR list. On October 24, staff met with staff at BDR and learned that in three of the older cases, judgments were issued for the City; three other claims had been discharged due to bankruptcy of the filers.

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on active accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
2	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	2,658.90	\$2,658.90	2,658.90
						<b>TOTAL</b>	<b>\$6,659</b>

#### 4. Revenues report.

For FY 12-13, the Commission was budgeted to generate \$100,000 in revenues. As of November 9, 2012, the Commission received \$ 35,128 as summarized below. The figure represents collection of approximately 35 percent of expected revenues for FY 12-13.

Revenues received as of November 9, 2012:

Source	Budgeted Amount FY 12-13	Receipts
Lobbyist Fees	\$27,000	\$3,500
Other Ethics General	\$1,000	\$84
Campaign Finance Fines	\$50,000	\$18,169
Campaign Consultant Fees	\$18,000	\$2,300
Lobbyist Fines	\$1,000	\$550
Statements of Economic Interests Fines	\$1,000	\$2540
Other Ethics Fines	\$1,000	\$1,300
Campaign Consultant Fines	\$1,000	\$100
Unallocated	\$0	\$6,585

Source	Budgeted Amount FY 12-13	Receipts
Total	\$100,000	\$35,128

#### **5. Lobbyist program.**

As of November 9, 2012, 91 individual lobbyists were registered with the Commission. For FY 12-13, as of November 9, 2012, total revenues collected were \$4,050, including \$3,500 in lobbyist registration fees and \$550 in late fines. The filing deadline for the next lobbyist disclosure statement is December 17, 2012.

#### **6. Campaign Consultant program.**

As of November 13, 2012, thirty-nine campaign consultants are registered with the Commission. \$2,300 in registration fees and \$100 in fines have been collected so far during the 2012-2013 fiscal year. The next campaign consultant quarterly report deadline is Monday, December 17, 2012. Staff will send reminders to all active campaign consultants two weeks before the deadline.

#### **7. Outreach and Education.**

On October 18, staff met with a delegation of 19 representatives of the Changzhi City Supervision Bureau. Sponsored by the US-China Business Training Center, the delegates were in the U.S. to learn about the role and responsibilities of the Ethics Commission, especially as they pertain to investigation procedures for ethics complaints and the enforcement of ethics rules. Established in 1992 and based in Los Angeles, the US-China Business Training Center is a China State Administration of Foreign Experts Affairs (SAFEA) certified provider of professional training programs for Chinese officials, industry professionals and business executives.

On October 19, staff met with a delegation of 20 officials from the Bureau of Supervision, Guangzhou Municipality, China. The delegation, sponsored by Triway International, Inc., was in the U.S. for a three-week trip to learn about anti-corruption practices in the U.S., and discussed the functions of the Ethics Commission, its education program, and performance evaluation standards and measures of City employees.

On November 9, staff met with a group of 19 officials from the Henan Bureau of Corruption Prevention, Henan Provincial Department of Supervision and other local subsidiaries. The group, also sponsored by Triway, visited the U.S. in early November to gain an understanding of administrative efficiency procedures in the U.S. They discussed the functions of the Ethics Commission, its training programs and performance standards and measures.

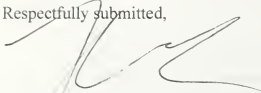
The Commission continues to offer trainings on Statements of Incompatible Activities to City departments.

The following are web video trainings available on the Commission website:

Department of Building Inspection SIA Training  
Candidates' Training (*new version posted on September 4*)  
Controller's Office SIA Training

Department on the Environment SIA Training  
Governmental Ethics Ordinance Training for City Employees  
Lobbyist Ordinance Training  
Medical Examiner's Office SIA Training  
Non-Candidate Recipient Committee Training  
Public Utilities Commission SIA Training  
SIA Template Language Training

Respectfully submitted,



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John St. Croix  
Executive Director

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DRAFT  
Minutes of the Regular Meeting of  
The San Francisco Ethics Commission  
November 26, 2012  
Room 400, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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**I. Call to order and roll call.**

Chairperson Hur called the meeting to order at 5:30 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamieenne Studley, Vice-Chairperson; Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner; Paul A. Renne, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst; Garrett Chatfield, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney (DCA).

OTHERS PRESENT: David Pilpel; Richard Knee; and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Memorandum from Executive Director, dated November 16, 2012, re: Regulations for Violations of the Sunshine Ordinance
- Draft Ethics Commission Regulations for Violations of the Sunshine Ordinance
- Ethics Commission Regulations for Investigations and Enforcement Proceedings
- San Francisco Administrative Code, Chapter 67, The San Francisco Sunshine Ordinance
- Memorandum from Executive Director, dated August 27, 2012, re: Proposed legislation to impose disclosure requirements on draft committees
- Draft Minutes of the Regular Meeting of the San Francisco Ethics Commission of October 22, 2012
- Executive Director's Report for The San Francisco Ethics Commission Meeting of November 26, 2012

**II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

David Pilpel stated that he would like Commission staff to prepare a report on the effectiveness on the public financing program.

**III. Discussion and possible action on draft regulations governing the Ethics Commission's handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF).**

Executive Director St. Croix introduced the item.

**Decision Point 1**

Chairperson Hur inquired why the term "Order of Determination" was defined if the term is not referenced in the regulations.

Investigator Chatfield stated that the term is defined to identify how a referral is made to the Commission by the Task Force and to identify which track a referral will be handled under.

Public Comment:

Richard Knee stated that the Commission should postpone making any decision regarding the proposed regulations until the five new members of the Task Force had an opportunity to review the regulations.

David Pilpel stated that the regulations should strike references to the “Supervisor of Records” because that individual cannot refer matters to the Commission.

**Motion 12-11-26-1 (Renne/Hayon) Moved, seconded, and passed (5-0) that the Ethics Commission adopt decision point 1.**

Decision Point 2

Commissioner Renne stated that sections II.D.2 and II.D.3 in Chapter Two should be re-ordered so that II.D.3 is renumbered as II.D.2 and vice versa. He stated that the re-ordering of the sections provides better clarity.

Investigator Argumedo responded to Commissioner Liu stating that the Commission may present its findings of fact orally at a hearing rather than in written form.

Chairperson Hur stated that language should be added to Chapter Two, section II.C.2 that would allow for the parties to exchange documents via email.

Public Comment:

Mr. Knee stated that the regulations propose two different burdens of proof in the two different hearing procedures and they should be standardized.

Mr. Pilpel stated that Chapters Two and Three should have parallel language. He stated that he was concerned about what would occur if the Commission came to a deadlocked decision in the event a hearing was conducted by only four Commissioners.

**Motion 12-11-26-2 (Renne/Studley) Moved, seconded and passed (5-0) that the Ethics Commission adopt decision point 2 as amended by the Commission.**

Decision Point 3

Vice-Chairperson Studley stated that the change made to Chapter Two, sections II.D.2 and II.D.3 should also be made to Chapter Three, sections III.B.2 and III.B.3.

Chairperson Hur and Commissioner Studley discussed and stated that the phrase “unless impracticable” be added to Chapter Three, section I.B.1 just prior to the clause regarding the scheduling of a hearing.

Public Comment:

Mr. Knee stated that the regulations should define what the regulations mean by the term “page.”

Mr. Pilpel stated that any document that is public and related to a hearing should be included with the report and recommendation. He stated that staff should develop a flow chart to aid a respondent with the hearing process.

After discussion between the Commissioners and DCA Shen, the Commissioners determined that there was no need to address potential deadlock situations as a respondent or complainant carry the burden to convince three Commissioners for any finding of a violation or non-violation.

**Motion 12-11-26-3 (Liu/Hayon) Moved, seconded, and passed (5-0) to adopt decision point 3 as amended by the Commission.**

#### Decision Point 4

After discussion between the Commissioners and the Executive Director, the Commission proposed adding a section in Chapter Four to require each Commissioner who participates in making a decision on a continued hearing, but who did not attend the hearing in its entirety, to certify on the record that he or she personally heard the testimony, either in person or by listening to a tape or recording of the proceeding, and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

After discussion, the Commissioners stated that language should be added to Chapter Four, section E, stating that a hearing will be continued unless four or more Commissioners are present.

#### Public Comment:

Mr. Knee stated that there should be a provision that requires audio and video recording of the hearings.

Mr. Pilpel stated that Sunshine Ordinance related complaints and corresponding documents should be public.

**Motion 12-11-26-4 (Renne/Hayon) Moved, seconded, and passed (5-0) to adopt decision point four as amended by the Commission.**

Decision Points Five through Seven were continued to a future meeting.

#### Decision Point 8

Chairperson Hur stated that the Commission should make every effort to review these regulations one year after implementation to determine if anything should be changed or improved.

#### Public Comment:

Mr. Knee stated that he need clarification as to what the Commission was taking action on with this decision point.

**Motion 12-11-26-5 (Renne/Studley) Moved, seconded, and passed (5-0) to adopt decision point 8 and the Regulations as a whole as amended by the Commission.**

#### **IV. Discussion and possible action on draft amendments to the Campaign Finance Reform Ordinance (CFRO) to impose disclosure requirements on “draft committees” that support the candidacy of an identifiable person for City elective office who has not declared as a candidate.**

Executive Director St. Croix introduced the item.

#### Decision Point 1

Chairperson Hur stated that he wanted to ensure that there was no ambiguity in the language defining “support.”

Deputy Executive Director Ng stated that the language that is currently in the draft would cover situations in which a committee attempts to encourage an undeclared individual to run for a specific elective office.

After discussion between the Commission and the Executive Director, the Commission proposed to amend the language in section 1.160(a)(1) to read “in order to support the qualification or election of an identifiable person to City elective office who has not qualified as a candidate.”

Public Comment:

Mr. Pilpel stated that the term “qualification” should be included into the definition of “draft committee.”

**Motion 12-11-26-6 (Hayon/Renne) Moved, seconded, and passed (5-0) to adopt decision point 1 as amended by the Commission.**

Decision Point 2

Commissioner Liu stated that the language for section 1.160(b)(1) should read “Draft committees shall file the same statement required to be filed by a primarily formed committee” and stated that it would help clarify the filing requirements.

After discussion, the suggested language for section 1.160(b)(1) was proposed as “Draft committees shall file campaign finance-related filings, reports, or statements required by either state or local law for a primarily formed committee supporting a candidate seeking the same City elective office.”

Public Comment:

Mr. Pilpel stated that there are an insufficient number of commas in the proposed language making the provision difficult to interpret.

**Motion 12-11-26-7 (Renne/Liu) Moved, seconded, and passed (5-0) to adopt decision point 2 as amended by the Commission.**

**V. Closed Session - Public Employee Performance Evaluation: Executive Director John St. Croix.**

Public Comment:

Mr. Pilpel stated his support for the Executive Director.

**Motion 12-11-26-8 (Studley/Hayon) Moved, seconded, and passed (5-0) that the Commission to go into closed session.**

The Commission went into closed session at 7:55 p.m. All persons left the room except the five Commissioners and the Executive Director.

The Commission returned to open session at 9:10 p.m.



Motion 12-11-26-9 (Hayon/Studley) Moved, seconded, and passed (5-0) that the Commission not disclose the closed session proceedings.

**VI. Discussion and possible action on minutes of the Commission's regular meeting of October 22, 2012.**

Public Comment:

Mr. Pilpel noted several typographical errors. Staff indicated that those errors would be corrected.

Motion 12-11-26-10 (Liu/Studley) Moved, seconded, and passed (5-0) that the Commission approve the minutes as amended.

**VII. Discussion of Executive Director's Report.**

The Executive Director introduced the report and noted several highlights.

Public Comment:

Mr. Pilpel stated that report should contain a list of bad actors who still owe fines and non-filers.

**VIII. Discussion on items for future meetings.**

None.

Public Comment:

None.

**IX. Adjournment.**

Motion 12-11-26-11 (Studley/Renne) Moved, seconded, and passed (5-0) that the Commission adjourn.

The meeting adjourned at 9:15 p.m.



Minutes of the Regular Meeting of  
The San Francisco Ethics Commission  
November 26, 2012  
Room 400, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

**I. Call to order and roll call.**

Chairperson Hur called the meeting to order at 5:30 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamiene Studley, Vice-Chairperson; Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner; Paul A. Renne, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst; Garrett Chatfield, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney (DCA).

OTHERS PRESENT: David Pilpel; Richard Knee; and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

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David Pilpel stated that he would like Commission staff to prepare a report on the effectiveness on the public financing program.

**III. Discussion and possible action on draft regulations governing the Ethics Commission's handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF).**

Executive Director St. Croix introduced the item.

**Decision Point 1**

Chairperson Hur inquired why the term "Order of Determination" was defined if the term is not referenced in the regulations.



Investigator Chatfield stated that the term is defined to identify how a referral is made to the Commission by the Task Force and to identify which track a referral will be handled under.

Public Comment:

Richard Knee stated that the Commission should postpone making any decision regarding the proposed regulations until the five new members of the Task Force had an opportunity to review the regulations.

David Pilpel stated that the regulations should strike references to the "Supervisor of Records" because that individual cannot refer matters to the Commission.

**Motion 12-11-26-1 (Renne/Hayon) Moved, seconded, and passed (5-0) that the Ethics Commission adopt decision point 1.**

Decision Point 2

Commissioner Renne stated that sections II.D.2 and II.D.3 in Chapter Two should be re-ordered so that II.D.3 is renumbered as II.D.2 and vice versa. He stated that the re-ordering of the sections provides better clarity.

Investigator Argumedo responded to Commissioner Liu stating that the Commission may present its findings of fact orally at a hearing rather than in written form.

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Public Comment:

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Mr. Pilpel stated that Chapters Two and Three should have parallel language. He stated that he was concerned about what would occur if the Commission came to a deadlocked decision in the event a hearing was conducted by only four Commissioners.

**Motion 12-11-26-2 (Renne/Studley) Moved, seconded and passed (5-0) that the Ethics Commission adopt decision point 2 as amended by the Commission.**

Decision Point 3

Vice-Chairperson Studley stated that the change made to Chapter Two, sections II.D.2 and II.D.3 should also be made to Chapter Three, sections III.B.2 and III.B.3.

Chairperson Hur and Commissioner Studley discussed and stated that the phrase "unless impracticable" be added to Chapter Three, section I.B.1 just prior to the clause regarding the scheduling of a hearing.

Public Comment:

Mr. Knee stated that the regulations should define what the regulations mean by the term "page."

Mr. Pilpel stated that any document that is public and related to a hearing should be included with the report and recommendation. He stated that staff should develop a flow chart to aid a respondent with the hearing process.



After discussion between the Commissioners and DCA Shen, the Commissioners determined that there was no need to address potential deadlock situations as a respondent or complainant carry the burden to convince three Commissioners for any finding of a violation or non-violation.

**Motion 12-11-26-3 (Liu/Hayon) Moved, seconded, and passed (5-0) to adopt decision point 3 as amended by the Commission.**

#### Decision Point 4

After discussion between the Commissioners and the Executive Director, the Commission proposed adding a section in Chapter Four to require each Commissioner who participates in making a decision on a continued hearing, but who did not attend the hearing in its entirety, to certify on the record that he or she personally heard the testimony, either in person or by listening to a tape or recording of the proceeding, and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

After discussion, the Commissioners stated that language should be added to Chapter Four, section E, stating that a hearing will be continued unless four or more Commissioners are present.

#### Public Comment:

Mr. Knee stated that there should be a provision that requires audio and video recording of the hearings.

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**Motion 12-11-26-4 (Renne/Hayon) Moved, seconded, and passed (5-0) to adopt decision point four as amended by the Commission.**

Decision Points Five through Seven were continued to a future meeting.

#### Decision Point 8

Chairperson Hur stated that the Commission should make every effort to review these regulations one year after implementation to determine if anything should be changed or improved.

#### Public Comment:

Mr. Knee stated that he needed clarification as to what the Commission was taking action on with this decision point.

**Motion 12-11-26-5 (Renne/Studley) Moved, seconded, and passed (5-0) to adopt decision point 8 and the Regulations as a whole as amended by the Commission.**

#### **IV. Discussion and possible action on draft amendments to the Campaign Finance Reform Ordinance (CFRO) to impose disclosure requirements on "draft committees" that support the candidacy of an identifiable person for City elective office who has not declared as a candidate.**

Executive Director St. Croix introduced the item.

#### Decision Point 1





Chairperson Hur stated that he wanted to ensure that there was no ambiguity in the language defining “support.”

Deputy Executive Director Ng stated that the language that is currently in the draft would cover situations in which a committee attempts to encourage an undeclared individual to run for a specific elective office.

After discussion between the Commission and the Executive Director, the Commission proposed to amend the language in section 1.160(a)(1) to read “in order to support the qualification or election of an identifiable person to City elective office who has not qualified as a candidate.”

Public Comment:

Mr. Pilpel stated that the term “qualification” should be included in the definition of “draft committee.”

**Motion 12-11-26-6 (Hayon/Renne) Moved, seconded, and passed (5-0) to adopt decision point 1 as amended by the Commission.**

**Decision Point 2**

Commissioner Liu stated that the language for section 1.160(b)(1) should read “Draft committees shall file the same statement required to be filed by a primarily formed committee” and stated that it would help clarify the filing requirements.

After discussion, the suggested language for section 1.160(b)(1) was proposed as “Draft committees shall file campaign finance-related filings, reports, or statements required by either state or local law for a primarily formed committee supporting a candidate seeking the same City elective office.”

Public Comment:

Mr. Pilpel stated that there are an insufficient number of commas in the proposed language making the provision difficult to interpret.

**Motion 12-11-26-7 (Renne/Liu) Moved, seconded, and passed (5-0) to adopt decision point 2 as amended by the Commission.**

**V. Closed Session - Public Employee Performance Evaluation: Executive Director John St. Croix.**

Public Comment:

Mr. Pilpel stated his support for the Executive Director.

**Motion 12-11-26-8 (Studley/Hayon) Moved, seconded, and passed (5-0) that the Commission to go into closed session.**

The Commission went into closed session at 7:55 p.m. All persons left the room except the five Commissioners and the Executive Director.

The Commission returned to open session at 9:10 p.m.



**Motion 12-11-26-9 (Hayon/Studley) Moved, seconded, and passed (5-0) that pursuant to San Francisco City Charter, section C3.699-13; California Brown Act, section 54957.1; and San Francisco Sunshine Ordinance, section 67.12; the Commission not disclose the closed session proceedings.**

**VI. Discussion and possible action on minutes of the Commission's regular meeting of October 22, 2012.**

Public Comment:

Mr. Pilpel noted several typographical errors. Staff indicated that those errors would be corrected.

**Motion 12-11-26-10 (Liu/Studley) Moved, seconded, and passed (5-0) that the Commission approve the minutes as amended.**

**VII. Discussion of Executive Director's Report.**

The Executive Director introduced the report and noted several highlights.

Public Comment:

Mr. Pilpel stated that report should contain a list of bad actors who still owe fines and non-filers.

**VIII. Discussion on items for future meetings.**

None.

Public Comment:

None.

**IX. Adjournment.**

**Motion 12-11-26-11 (Studley/Renne) Moved, seconded, and passed (5-0) that the Commission adjourn.**

The meeting adjourned at 9:15 p.m.



Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

## NOTICE OF CANCELLATION OF REGULAR MONTHLY MEETING

December 24, 2012 5:30 P.M.  
Room 400 City Hall  
1 Dr. Carlton B. Goodlett Place, San Francisco

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### MEETING IS CANCELLED

The next regularly scheduled meeting of the Commission will occur on Monday, January 28, 2013 at 5:30 p.m. in Room 400 City Hall.

\*\*\*

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in a meeting, please contact the Ethics Commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline is 4:00 p.m. the previous Friday. Late requests will be honored, if possible. Services available on request include the following: American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes. Please contact the Ethics Commission (415) 252-3100 to make arrangements for a disability-related modification or accommodation.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are

reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

**KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE** (Chapter 67 of the San Francisco Administrative Code): Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

**FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE**, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: [SOTF@SFGOV.ORG](mailto:SOTF@SFGOV.ORG). Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

**Lobbyist Registration and Reporting Requirements:** Individuals who influence or attempt to influence local policy or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 – 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100, fax (415) 252-3112; and website: [www.sfgov.org/ethics](http://www.sfgov.org/ethics).

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